

Quitclaim Deed

This Quitclaim Deed, made this 22ND day of June, 2021, by **Jennifer Butts Baker (formerly, Jennifer Dorsey Butts; formerly, Jenifer Susan Dorsey)** ("Grantor") and **Justin Holder** ("Grantee"):

Whereas, Grantor acquired a parcel of land by virtue of a Deed dated August 31, 1984, and recorded among the Land Records for Washington County, Maryland at Liber 772, folio 1069; and

Whereas, by virtue of said Deed recorded at Liber 772, folio 1069, Grantor acquired fee simple title to the lands described as Tract No. 1 of Parcel No. 3 in that Deed dated April 14, 1978, and recorded among the Land Records for Washington County, Maryland at Liber 659, folio 580 (said Tract No. 1 of Parcel No. 3 of said Deed recorded at Liber 659, folio 580 is hereinafter referred to as "**Grantor's Lands**"); and

Whereas, on November 3, 2020, Grantor quitclaimed to Grantee Justin Holder of Washington County, Maryland all rights, title and interest in and to such portions of the aforesaid Grantor's Lands that remained in Grantor's title, by Deed recorded at Liber 6414 Folio 219 among the Land Records of Washington County ; and

Whereas, Samuel Cost of Washington County Maryland, Predecessor in Title to Grantor, by Deed dated October 30, 1866 and recorded at Liber I.N. 18, folio 488 among the Land Records of Washington County, granted to the Washington County Railroad Company, a *quasi*-public corporation incorporated by chapter 334 of the Acts of Assembly of 1864, some rights and interest "through the land of the said Samuel Cost," as more particularly described in said Deed ; and

Whereas, Grantor is heir to both Samuel Cost of Washington County, Maryland and his son, Aaron Cost (also a predecessor in title to the Grantor), and, therefore, to the extent that any

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prior land instrument failed to convey all of Samuel Cost's or Aaron Cost's Fee Simple or other remaining right, title, interest, and estate in and to any rights in any lands lying within the bounds of the former Washington County Railroad Company Right-of-Way, title to any of said lands remains in the Grantor; and

Whereas, the Deed recorded at Liber I.N. 18, folio 488 of the Land Records of Washington County expressly describes the metes and bounds of the grant therein of rights through the land of Samuel Cost as beginning "at a point on the center line of the road bed of the Washington County Rail Road Company as the same would be when built"... "and extending from said point on the center line of said road bed as the same would be as aforesaid," i.e., "when built;" and

Whereas, to the extent that the extent and definition of the rights granted to the Washington County Rail Road Company were dependent upon the "center line of the road bed of the Washington County Rail Road Company as the same would be when built," and to the extent that the rights were granted by Samuel Cost to the Washington County Rail Road Company as a *quasi*-public company incorporated by Chapter 334 of the Acts of Assembly of 1864, which said company was granted, by the said Act, only a limited right "to construct a road or roads from Hagerstown to any point on the line of the Baltimore and Ohio Railroad east of Harper's Ferry ... not exceeding sixty-six feet wide," and "after the purchase and condemnation thereof ... may enter upon and use and excavate any land that may be wanted for the site of the said railroad," then, the rights acquired by the said Washington County Rail Road Company were limited to the purpose of operating a Railroad; and

Whereas, CSX Transportation was Successor in Interest to Baltimore and Ohio Railroad, and Baltimore and Ohio Railroad was Successor in Interest to Washington County Rail Road Company; and

Whereas, Baltimore and Ohio Railroad as Successor in Interest to Washington County Railroad Company, expressed its decisive intent and objective manifestation of the same in Interstate Commerce Commission Docket **AB 19 SUB 20** on March 18th, 1975, and in all related proceedings following thereafter, **ABANDONING** the **RIGHT OF WAY** commonly known as the "Washington County Branch of the Baltimore and Ohio Railroad;" and

Whereas, Baltimore and Ohio Railroad as Successor in Interest to Washington County Rail Road Company, did notoriously and overtly remove all tracks, rails and bridges within the

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Metes and Bounds of aforesaid **ABANDONED RAILROAD RIGHT OF WAY** as it crossed **THROUGH THE LANDS of Samuel Cost**; and

Whereas, the Roadbed of aforesaid Washington County Rail Road Company, is and was, as of the time the tracks and bridges were removed, **NO LONGER BUILT** and the **ABANDONED RAILROAD RIGHT OF WAY** as it crossed **THROUGH THE LANDS of Samuel Cost** is and was no longer in service as a railroad; and

Whereas, "[t]he general rule is that the right and title to a mere easement in land acquired by a *quasi*-public corporation, either by purchase, condemnation or prescription, for a public purpose is dependent upon the continued use of the property for that purpose, and when such public use is abandoned the right to hold the land ceases, and the property reverts to its original owner or his successors in title." *Maryland & Pa. R. Co. v. Mercantile-Safe Deposit & Trust Co.*, 224 Md. 34 (1960); and

Whereas, to the extent that Samuel Cost, Aaron Cost, or their heirs, retained any right, title, interest, or estate in and to any of the lands within the metes and bounds of the grant of the railroad right of way by Samuel Cost by the Deed recorded at Liber I.N. 18, folio 488, and to the extent that said rights did not convey unto the Grantor solely by virtue of that Deed recorded at Liber 772, folio 1069, and to the further extent that the Grantor has inherited any or all of said rights, title, interest or estate in and to the said lands, the Grantor, heir to Samuel Cost and Aaron Cost, desires to quitclaim unto the Grantee any and all of her remaining rights, title and interest, estate and appurtenances thereto, in and to any and all of the lands as contained in the Metes and Bounds description of Indenture dated September 10th, 1832 to Samuel Cost of Washington County, Maryland by David Hess of Montgomery County, Ohio, *et al.*, recorded among Land Records of Washington County at Liber N. N., folio 520, to include specifically, and without limitation, any rights, title, interest and estate in any portion of land through the said lands of Samuel Cost, commonly known as the "Abandoned Railroad". Said lands and all rights, title, interest and estate in said lands as described in this paragraph shall be referred to hereafter as the "Lands Remaining in Cost."

Now Therefore Witnesseth: That, for and in consideration of the sum of **\$500.00**, the receipt and sufficiency of which by the Grantor is hereby acknowledged, said Grantor does hereby grant, convey, release, assign and quitclaim to the Grantee, his personal representatives, heirs and assigns, all of the Grantor's rights, title, interest, and estate in any and all of the Lands Remaining in Cost as the title to the same shall remain in the Grantor as of the date of this

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Quitclaim Deed, and all rights and appurtenances thereto, including but not limited to: (a) such of those lands as are more specifically described in that certain DESCRIPTION OF REMAINING LANDS OF PARCEL No. 3, Liber 659, folio 580 dated August 7, 2020, prepared by George E. Nagel, Professional Land Surveyor of Fox & Associates, Inc., a true and accurate copy of which is annexed hereto and incorporated herein by reference; (b) the Lands Remaining in Cost, and (c) any and all of Grantor's Lands lying clear of any previous conveyance of Grantor out of the aforesaid Grantor's Lands.

Together With and Subject To all of the covenants, easements, rights of way, appurtenances, advantages and restrictions of record applicable thereto, including, specifically that Right of Way that was granted by that deed dated March 22, 1872 and recorded in W.McK.K. 6, folio 363 among the land records for Washington County, more specifically described therein as a Right of Way granted "unto the said David Kretzer his heirs and assigns forever the use of a wagon road to and from said land being conveyed, commencing at a stone situated on the West margin of the said Washington County Rail Road, at what said Cost called his Rail Road Crossing, and running thence along the Western boundaries of said road, South 30 3/4 degrees East 14 perches to a stone, South 36 degrees East 10 6/10 perches to the lands of Jacob Keedy, thence along the division line between said Aaron Cost and Jacob Keedy until — intersect the road leaving from said Jacob Keedy's house to the County road leading from Keedysville to Martin Eakle's Mill."

In Witness Whereof, the Grantor has executed this Quitclaim Deed on the date, month and year heretofore written.

Jennifer Butts Baker
Grantor, Jennifer Butts Baker 6/22/2021
Grantor, Jennifer Dorsey Butts
Grantor, Jennifer Susan Dorsey

David G. Cline
Witness 6/22/2021

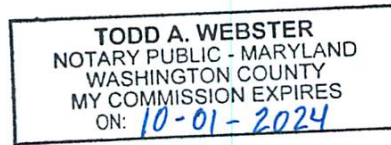
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STATE OF MARYLAND COUNTY OF WASHINGTON

This document was acknowledged before me on June 22nd, 2021 by **Jennifer Susan Dorsey Butts Baker** (Grantor) to be her act.



Signature of Notary (SEAL)



My Commission Expires: 10-01-2024

I hereby certify that the foregoing instrument was prepared by or under the supervision of the undersigned Adam D. Greivell, Esq., an attorney duly admitted to practice before the Court of Appeals of Maryland to the instrument.

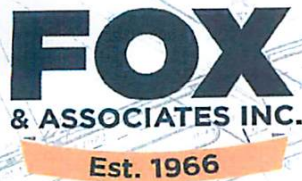


Adam D. Greivell, Esq.

Mail to:

Justin Holder
308 West Chapline Street
Sharpsburg, Maryland 21782





**ENGINEERS
SURVEYORS
PLANNERS
LANDSCAPE ARCHITECTS**

981 Mt. Aetna Road
Hagerstown, MD 21740
Phone: 301-733-8503
Fax: 301-733-1853
Email: foxhagerstown@foxassociatesinc.com

August 7, 2020

**DESCRIPTION OF
REMAINING LANDS OF
PARCEL No. 3**
Liber 659, folio 580

Situate southeast of Stonecrest Circle and northeast of Dogstreet Road in District Number 19, Washington County, Maryland.

Beginning at a stone found, said stone being at the beginning of the 12th or South 24° West 27 ½ perch line of Parcel No. 4 in a deed from J. Albert Shank and Frances S. Harp, Attorneys in fact for Sarah E. Shank, and Sarah E. Shank to Roy G. Reeder and Mae M. Reeder, dated April 30, 1945 and recorded in Liber 230 at folio 139 among the Land Records of Washington County, Maryland, thence with the 12th or South 24° West 27 ½ perch line

- | | |
|---------------------------|--|
| 1) South 24° 17' 24" West | 451.29 feet to the beginning of the 13 th or South 71° 45' West 31 7/10 perch line of Parcel No. 4 in the aforesaid deed, thence with a portion of said 13 th line |
| 2) South 71° 38' 43" West | 23.68 feet to a rear corner of Lot 14 in the Stonecrest subdivision, said point being designated as "SBC FD" on Sheet 1 of 4 of a plat entitled "Final Plat - Stonecrest" and recorded as Plat No. 8292 -8295 among the Land Records of Washington County, Maryland, thence with the rear boundaries of Lots 10 - 14, as shown on Sheet 1 of 4 and Sheet 2 of 4 of said plat |
| 3) North 24° 17' 24" East | 484.83 feet to a mag nail found set in a large rock along the southwestern boundary of a parcel of land convey from CSX Transportation, Inc. to the State of Maryland, to the use of the Department of Natural Resources, by deed dated September 6, 1991 and recorded in Liber 1015 at folio 796 among the Land Records of Washington County, Maryland, thence with said southwestern boundary the following two (2) courses; |
| 4) South 42° 40' 53" East | 25.71 feet, thence |
| 5) South 23° 53' 59" East | 2.57 feet to point along the 11 th or South 79° West 7 9/10 perch line of Parcel No. 4, thence with a portion of said 11 th line |
| 6) South 79° 17' 24" West | 9.96 feet to the Point of Beginning. |

Containing 8,286 square feet or 0.19 acres of land more or less.

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Remainder of Parcel No. 3
Liber 659, folio 580
Page 2 of 2

Being part of Parcel No. 3 described in a deed from Vincent R. Groh, Personal Representative of the Estate of Charles Dudley Pry to Leonard Leroy Dorsey and Susan P. Dorsey, Guardian of the property of Jennifer Susan Dorsey, dated April 14, 1978 and recorded in Liber 659 at folio 580 among the Land Records of Washington County, Maryland.

The bearings described above are in the datum of the Maryland Coordinate System NAD 83(2011).

This description was either personally prepared by me or I was in responsible charge of the preparation and the surveying work reflected in it, all in compliance with the requirements set forth in COMAR 09.13.06.12 in effect at the time of this work.



George E. Nagel
Professional Land Surveyor
Maryland Registration No. 21052
Expiration/Renewal Date: August 24, 2020



SERVICE DATE

JUN 22 1978

INTERSTATE COMMERCE COMMISSION

CERTIFICATE AND DECISION

Docket No. AB-19 (Sub-No. 20)

WASHINGTON COUNTY RAILROAD COMPANY AND THE BALTIMORE AND OHIO RAILROAD COMPANY ABANDONMENT PORTION HAGERSTOWN BRANCH BETWEEN WEVERTON AND HAGERSTOWN, ALSO PORTION OF THE ANTIETAM BRANCH NEAR SECURITY, ALL IN WASHINGTON COUNTY, MD

Decided June 19, 1978

I have considered the record in this proceeding, including the administratively final decision served April 27, 1978, in which the Commission, Division 2, acting as an Appellate Division, affirmed the decision of the Administrative Law Judge served November 8, 1977, which authorized the abandonment by the Washington County Railroad Company of the portion of its Hagerstown Branch between Valuation Station 0+00 at Weverton, MD, and Valuation Station 980+00 at or near Roxbury, MD, and the portion of its Security Branch between Valuation Stations 65+71 and 130+00 at or near Security, MD, and that the present and future public convenience and necessity permit the abandonment by The Baltimore and Ohio Railroad Company of operations over said lines of railroad. The decision served November 8, 1977, also provided that any person, including a government entity, would be given the opportunity to make an offer of financial assistance to the carrier applicant, within 15 days of the date of publication of the Commission's findings in the Federal Register, by filing with the Commission an offer containing the evidence specified in Procedures for Pending Rail Abandonment Cases, 41 Fed. Reg. 13691 (1976).

The notice of findings was published in the Federal Register on May 23, 1978. The time for the filing of offers of financial assistance has expired without a bona fide offer. In the absence of such an offer, an appropriate certificate and decision should be entered.

It is certified that the present and future public convenience and necessity permit abandonment of the above-described line, subject to the appropriate conditions for the protection of railway employees as specified in the prior decision and further that (1) Washington County Railroad Company and The Baltimore and Ohio Railroad Company shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, all bridges, and all culverts on the line for a period of 120 days from the service date of this certificate and decision unless said property has first been offered upon reasonable terms, to responsible persons interested in acquiring the property for public use and (2) in the event that a public or private organization interested in acquisition of the right-of-way does not come forward within the above-specified 120 day period, then applicants shall include in any contract for sale of the abandonment property the following: (a) that the subsequent purchaser of said property submit plans for future use of the property, including bridge structures, to the Commission and the Historic Preservation Council for review; and (b) that in the event the bridge is eventually demolished, the subsequent purchaser will, prior to demolition, ensure

that appropriate measures are taken to adequately record the structure according to standards prescribed by the Historic American Engineering Record.

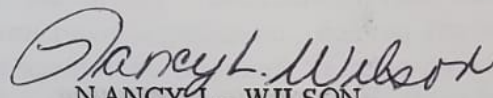
It is ordered:

(1) This certificate and decision shall take effect and be in force on the date it is served. Tariffs applicable to the line permitted to be abandoned may be canceled upon not less than 10 days' notice to this Commission and to the general public by filing and posting in the manner prescribed by the Commission under Section 6 of the Interstate Commerce Act. When filing schedules cancelling tariffs applicable to a line, the applicants shall, in such schedules, refer to this certificate and decision date and docket number.

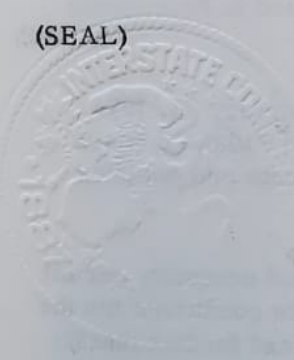
(2) If the authority granted by this certificate and decision is exercised, applicants shall submit two copies of the journal entries showing the retirement of the line from service, and shall advise this Commission in writing, immediately after abandonment of the line of railroad, of the date on which the abandonment actually took place.

(3) If the authority granted in this certificate and decision is not exercised within one year from its effective date, it shall be of no further force and effect.

By the Commission, Robert J. Brooks, Director, Office of Proceedings.


NANCY L. WILSON
Acting Secretary

(SEAL)



René J. Gunning
General Attorney
Law Department

Chessie System

2 North Charles Street
Baltimore, Maryland 21201
301 237 3813

December 6, 1978
File MD-6

FILE IN DOCKET

FILE IN DOCKET

Mr. H. G. Homme, Jr.
Acting Secretary
Interstate Commerce Commission
Constitution Avenue & 12th Street, N.W.
Washington, D.C. 20423

Re: Washington County Railroad Company and
Baltimore and Ohio Railroad Company-
Abandonment portion Hagerstown Branch
between Weverton and Hagerstown, also
portion of the Antietam Branch near
Security, all in Washington County,
Maryland -
Docket No. AB-19 (Sub No. 20)

Dear Mr. Homme:

By certificate and decision dated June 19, 1978
(served June 22, 1978), the Commission authorized the captioned
abandonment.

Please be advised that the abandonment authority was
exercised at 12:01 AM, November 15, 1978.

Copies of the journal entries in this regard will be
forwarded to the Commission in due course.

Very truly yours,

René J. Gunning

RJG:awc

INTERSTATE
COMMERCE COMMISSION
RECEIVED

DEC 10 1978

ADMINISTRATIVE SERVICES
MAIL UNIT

RECEIVED
INTERSTATE COMMERCE
COMMISSION
DEC 11 11 00 AM '78
FINANCE SUPPORT
DIVISION
OFFICE OF
PROCEDINGS

The Chesapeake and Ohio Railroad Company

The Baltimore and Ohio Railroad Company

APR 10 1979

ACAR/MJ

Mr. B. G. Lawler
Assistant Vice-President
& Comptroller
Chessie System
2 North Charles Street
Baltimore, Maryland 21201

Dear Mr. Lawler:

Thank you for your letter of April 4, 1979, submitting the accounting for the authorized abandonments of the Hagerstown and Antietam branches that had been inadvertently omitted from your original submission to us of February 2, 1979.

The accounting is acceptable and our file on this matter will be closed.

Sincerely yours,

AH
Aubrey H. Herndon, Jr.
Chief, Interpretations Branch

bc: Regional Auditor - Philadelphia
✓ Room 1221 for insertion in AB 19 (Sub. 20)

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On this first day of June, in the year eighteen hundred and sixty six before the subscriber a Justice of the Peace of the State of Maryland, in and for Washington County, aforesaid personally appeared, Zachariah S. Claggett and acknowledged the foregoing deed to be his act.

Wm. M. Eric. J. P.

Stamp 100

Entered

At the request of the Wash. Co. Rail Road Co. the following deed was recorded Oct. 30th 1866

This Deed, made this twenty third day of April, in the year one thousand eight hundred and sixty six, between James H. Claggett and Elizabeth Ann Claggett his wife, of Washington County in the State of Maryland, of the one part and the Washington County Rail Road Company, a Corporation duly incorporated under the laws of Maryland of the other part, Witnesses, that the said parties of the first part herefor and in consideration of the sum of eight hundred and seventy five dollars do grant unto the said party of the second part herefor, all that piece or parcel of ground in Washington County of the State of Maryland, which is contained within the limits and bounds following, that is to say: beginning for the same, at a point on the centre line of the road bed of the Washington County Rail Road Company, as the same would be when built, upon the line of the said Washington County Rail Road Company, as now located through the land of the said James H. Claggett and on the boundary line of the land of the said James H. Claggett, and extending from said point on the centre line of said road bed, as the same would be as aforesaid, sixty three feet in each direction, at right angles to the said centre line, and extending in addition thereto, one foot and a half horizontally, for every one foot vertical foot of any embankment, and one foot horizontally, for every vertical foot of any cut through the said land, the said distance to be calculated from a slope drawn on each side of said centre line, at a point thirty three feet from the centre line, and running from each end of said line of sixty three feet wide, with the additions hereinbefore referred to by parallel or ranging lines, on a level with the road bed, and sixty six feet apart, with the necessary additions for slopes of excavations and embankments, through the land of the said James H. Claggett, it being the intention of this deed, to grant to the said Washington County Rail Road Company, land to the width of thirty three feet on each side of the centre line of the said road bed, as the same would be when built, with the necessary additions aforesaid, through the entire land of the said James H. Claggett, in Washington County aforesaid. Witnesses our hands and seals.

Witness, D. G. Potter

Amanda Garrett

John H. Lindsay

James H. Claggett

Elizabeth Ann Claggett

State of Maryland Washington County, to wit:

On this twenty third day of April, in the year eighteen hundred and sixty six before the subscriber a Justice of the Peace of the State of Maryland, in and for Washington County, aforesaid, personally appeared, James H. Claggett and Elizabeth Ann Claggett his wife and each acknowledged the foregoing deed, to be their act.

D. G. Potter, J. P.

Stamp 50

Entered

At the request of the Wash. Co. Rail Road Co. the following deed was recorded Oct. 30th 1866

This Deed, made this seventh day of April, in the year one thousand eight hundred and sixty six, between Samuel Cort of Washington County, in the State of Maryland, of the one part and the Washington County Rail Road Company, a

Corporation, duly incorporated under the laws of Maryland, of the other part: Witness that the said party of the first part hereunto, for and in consideration of the sum of one hundred and twenty five dollars, doth grant unto the said party of the second part hereunto all that piece or parcel of ground, in Washington County of the State of Maryland, which is contained within the limits and bounds following, that is to say, beginning for the same at a point on the centre line of the road bed of the Washington County Rail Road Company, as the same would be when built, upon the line of the Washington County Rail Road Company, as now located through the land of the said Samuel Coats, and on the boundary line of the land of the said Samuel Coats, and extending from said point on the centre line of said road bed, as the same would be as aforesaid, thirty three feet in each direction at right angles, to the said Centre line, and extending in addition thereto one foot and a half horizontally for every one vertical foot of any embankment, and one foot horizontally for every vertical foot of any cut, through the said land, the said distance to be calculated from a slope drawn on each side of said centre line, at a point thirty three feet from the centre line and running from each end of said line of sixty six feet wide, with the additions hereinbefore referred to, by parallel or varying lines, on a level with the road bed, and sixty six feet apart. With the necessary additions, for slopes of excavations and embankments, through the land of the said Samuel Coats, it being the intention of this deed, to grant to the said Washington County Rail Road Company, land to the width of thirty three feet, on each side of the centre line of the said road bed, as the same would be when built, with the necessary additions aforesaid, through the entire land of the said Samuel Coats, in Washington County aforesaid. Witness my hand and seal,

Witness D. G. Potter

J. G. Crivell J.

Samuel Cort, Esq.

State of Maryland, Washington County to wit;
On this seventh day of April, in the year eight hundred and sixty six, before the
Subscriber a Justice of the Peace of the State of Maryland, in and for Washington
County aforesaid personally appeared Samuel Cost and acknowledges the
 foregoing deed to be his act.

L. G. Potter, Jr. P.

Stamp 2.50

At the request of the Wash. Co. Rail Road Co.
the following deed was recorded Oct. 30th 1866.

The following deed was recorded Oct. 30. 1886.

This Deed made this tenth day of February, in the year, one thousand eight hundred and sixty six, between John Emmett, Mary E. Emmett and Ann E. Emmett of Washington County in the state of Maryland, of the one part, and the Washington County Rail Road Company, a Corporation duly incorporated under the laws of Maryland of the other part, Witnesseth, that the said parties of the first part hereunto, for and in consideration of the sum of twenty four hundred dollars, do grant unto the said party of the second part hereunto, all that piece or parcel of ground, in Washington County of the state of Maryland, which is contained within the limits and bounds following, that is to say: Beginning for the same at a point on the center line of the road bed of the Washington County Rail Road Company, as the same would be, when built, upon the line of the Washington County Rail Road Company, as now located through the land of the said, John, Mary E. and Ann E. Emmett, and on the boundary line of the land of the said John, Mary E. and Ann E. Emmett, and extending from said point on the center line of said road bed, as the same would be, as aforesaid, thirty three feet, in each direction at right angles to the said center line, and extending, in addition thereto, one foot and a half horizontally, for every vertical foot of

A. W. BRADFORD, ESQUIRE, GOVERNOR.

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CHAPTER 333.

AN ACT to amend the first section of Article Passed Mar.
10, 1864.
seventy-one of the Code of Public General
Laws, relating to Oysters.

SECTION 1. *Be it enacted by the General Assembly* Amended and
re-enacted.
of Maryland, That section first of Article seventy-
one, of the Code of Public General Laws of this
State, entitled "Oysters," be amended and re-
enacted so as to read as follows:

That it shall be lawful for any person or per- Mode of catch -
ing.
sons to use such tongs and rakes as may suit their
convenience in taking or catching oysters within
the waters of this State.

Sec. 2. *And be it enacted*, That this act shall In force.
take effect from the date of its passage.

CHAPTER 334.

AN ACT to incorporate the Washington County Passed Mar.
10, 1864.
Railroad.

SECTION 1. *Be it enacted by the General Assembly* Incorporated
of Maryland, That Isaac Nesbitt, George S. Ken-
nedy, Jacob A. Miller, Johns Hopkins, Galloway
Chester, Peter B. Small and Robert Fowler be
and they are hereby appointed Commissioners,
under the direction of a majority of whom sub-
scriptions may be received to the capital stock of
the Washington County Railroad Company, which
is hereinafter incorporated; and that the said
Commissioners, or a majority of them, may cause
books to be opened at such times and places as
they may direct, for the purpose of receiving sub-
scriptions to the said capital stock of said com-
pany, after having given such notice of the time
and places of opening the same as they may deem
proper; and if such subscription to the capital

stock of said company, as is necessary for its incorporation, be not previously obtained, the said books may be opened from time to time, at the discretion of said commissioners, or a majority of them; and if any of said Commissioners shall die, resign or refuse to act, another may be appointed in his stead by the remaining Commissioners, or a majority of them; and the said Commissioners shall be the first Directors of said company, and shall continue such until their successors are duly elected and qualified as hereinafter mentioned.

May subscribe Sec. 2. *And be it enacted*, That any individuals or any corporations incorporated by the laws of this State, may subscribe for such portion of the stock of the said company as to the said individual corporation or corporations may seem proper.

Capital stock. Sec. 3. *And be it enacted*, That the capital stock of the Washington County Railroad Company shall be one million of dollars, in shares of twenty dollars each, which said capital may be increased at the discretion of the Directors to be appointed as hereinafter provided for, to an amount not exceeding one and a-half millions of dollars; and as soon as five thousand shares of the capital stock shall be subscribed, the subscribers to the said stock and their successors shall be and they are hereby declared to be incorporated into a company, by the name of the Washington County Railroad Company, and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, so far as shall be necessary for the purpose hereinafter mentioned, and no further, and shall have perpetual succession by said corporate name, may sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at their pleasure, and shall have, enjoy, and may exercise all the powers, rights and privileges which are necessary for the purposes mentioned in this act.

Sec. 4. *And be it enacted*, That upon every subscription there shall be paid, at the time of subscribing to the said Commissioners or their agents, appointed to receive such subscriptions, the sum of one dollar on every share subscribed, and the residue thereof shall be paid in such instalments

as the President and Directors of the said railroad, hereinafter directed to be appointed, shall require; *provided*, that no payment shall be demanded until at least thirty days public notice shall be given in at least two newspapers published in Washington county, and one in the city of Baltimore; and if any subscriber shall fail or neglect to pay any instalment or part of said subscription thus demanded, for the space of sixty days next after the time the said shall be due and payable, the stock on which it is demanded shall be forfeited to the Company, but the President and Directors may remit any such forfeitures on such terms as they shall deem proper; *provided, always*, that in addition to the forfeitures aforesaid, the said company shall be entitled to receive, sue for and recover the said instalment and subscription due as aforesaid in such manner as other debts and claims are now recoverable by law.

Provisos.

Sec. 5. *And be it enacted*, That if the subscription herein deemed necessary to the incorporation of said company shall not be obtained within two years after the first opening of subscription books by the said Commissioners, this act and all the subscriptions under it shall be null and void, and the said Commissioners, after discharging the expenses of opening the books, shall return the residue of the money to the several subscribers in due proportion to the sums respectively paid in by them.

Money returned on condition.

Sec. 6. *And be it enacted*, That immediately upon the incorporation of said company as hereinbefore provided for, the said Commissioners being Directors, as hereinbefore declared, or a majority of them, shall elect one of their number to be President of said Board of Directors; and on the same day annually thereafter, there shall be elected seven Directors of said company, who shall thereafter elect one of their number for President, and hold their office until their successors are duly elected and qualified, and four Directors shall be a quorum for the transaction of business, it being the duty of the President, for the time being, to cause thirty days notice of the time and place of holding each annual election, to be given by one or more advertisements in a newspaper published in Hagerstown and in Baltimore, and in all elec-

Elections.

tions the stockholders may vote in person or by written proxy, according to the number of shares held, each share of stock being entitled to one vote, and a quorum of the Directors, for the time being, shall be Judges of the Election, and no one shall be a Director who is not a stockholder, and in case of vacancy in said Board by death or resignation of the President or a Director, a quorum may fill said vacancy by electing some stockholder to such vacancy.

Meetings.

Proviso.

Sec. 7. *And be it enacted*, That a general meeting of the stockholders may be called at any time upon giving thirty days notice; *provided*, that a majority of the stockholders holding a majority of the capital stock of said company shall be required to transact business in such meeting of the stockholders, and at all such meetings the vote shall be taken by stock.

Duty of President and Directors.

Proviso.

Sec. 8. *And be it enacted*, That the said President and Directors, or a majority of them, may appoint all such officers, engineers, agents or servants whatsoever as they may deem necessary for the transaction of the business of the company, and may remove them at their pleasure, and they, or a majority of them, shall have power to determine by contract the compensation of all such officers in the employ of said company, and to determine the manner of adjusting and settling all accounts against said company, and also the manner and evidence of the transfer of stock in said company, and they, or a majority of them, shall have power to pass all by-laws which they may deem necessary or proper for exercising all the powers vested in the company hereby incorporated, and for carrying the object of this act into effect; *provided, only*, that such by-laws shall not be contrary to the laws of the United States or the laws of this State or any of the provisions of this act.

Capital stock may be increased.

Sec. 9. *And be it enacted*, That if the capital stock of said company shall be deemed insufficient for the purposes of this act, then and in that case it shall and may be lawful for the President and Directors of said company, or a majority of them, from time to time to increase the said capital stock by the addition of as many shares as they may deem necessary, for which they may, at their op-

tion, cause subscriptions to be received in the manner prescribed by them, or may sell the same for the benefit of the company, to any individuals or any incorporated company, by the laws of this State, which are hereby authorized to buy the same, and that they, or a majority of them, shall have power to borrow money for the objects of this act from any individuals or corporations incorporated by this State, which are hereby authorized to lend the same, to issue certificates or other evidence of such loans, and to mortgage or pledge the property of the company for the payment of the same and its interest to such individuals, corporation or corporations, or for their use and benefit.

Sec. 10. *And be it enacted*, That the President and Directors of said company shall be and they are hereby invested with all the rights and powers necessary to construct a road or roads from Hagerstown to any point on the line of the Baltimore and Ohio Railroad east of Harper's Ferry, within the limits of Frederick or Washington counties, in the State of Maryland, not exceeding sixty-six feet wide, with as many sets of tracks as the said President and Directors may deem necessary, and they may cause to be made or contract with others for making any part of said railroad, and they, their agents, or those with whom they may contract for making any part of the same, or their agents, after the purchase and condemnation thereof in the manner hereinafter prescribed, may enter upon and use and excavate any land that may be wanted for the site of the said railroad or the erection of the warehouses or other works necessary for said railroad, or for any other purposes necessary for the construction or repair of said road or its works, and that they may build bridges, fix scales and weights, lay rails, and may take and use any earth, timber, gravel, stone and other materials which may be wanted for the construction or repair of any part of said road or any of its works, and may make and construct all works whatsoever necessary or expedient in order to the proper completion of said road.

Power to construct a road.

Sec. 11. *And be it enacted*, That the President and Directors of said company or a majority of them, or their agents may agree with the owner

Warrant may be issued.

Sheriff re-
quired to sum-
mon jury.

or owners of any land, earth, timber, gravel or other materials, or any improvement for the construction or repair of said road or its works, for the purchase or use, and occupation of the same, and in case they cannot agree, or if the owner or owners or any of them, be a "*feme covert*," under age, "*non compos mentis*," or out of the county in which the property wanted may lie, when such land or material may be needed, on application to a Justice of the Peace of such county, he shall issue his warrant under his hand and seal to the Sheriff of said county, requiring him to summon a jury of twenty inhabitants of said county, not related or in anywise interested in the premises to meet on the land, or the other property or materials to be valued, on a day to be specified in said warrant, not less than ten or more than twenty days after issuing the same, and if at such time and place in case any of the Jurors summoned do not attend, the said Sheriff shall summon immediately as many Jurors as may be necessary with the Jurors in attendance, to furnish a panel of twenty Jurors in attendance, and from them each party, it, his, her or their agents, and if either be not present in person or by agent, the Sheriff may strike off four Jurors for each of the absent parties, and the remaining twelve shall act as the Jury of interest of damages, and before they act as such the Sheriff shall administer to each of them an oath or affirmation as the case may be, that he will justly and impartially value the damages which the owner or owners of said lands and materials will sustain by the use or occupation of the same required by the company, if required by the party or parties whose lands are to be affected by their proceedings, the Jury shall cause to be summoned such witnesses as the parties may require, and shall examine them on oath in relation to the value of the property to be condemned, and the damages to that adjoining, and they shall reduce the testimony if any is taken by them to writing and after the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, they shall ascertain and determine the compensation which ought justly to be made by the said company to the party or parties owning or inter-

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ested in the real estate appraised by them, and the said company shall give written notice to all persons whose interest are to be effected by the condemnation of any lands of the time and place of holding the inquisition at least ten days prior to the holding of such inquisition and the said Jury, shall reduce their inquisition to writing, and shall sign and seal the same, and it shall then be returned by the said Sheriff to the Clerk of the Circuit Court for his county, and by such Clerk filed in this court, and shall be confirmed by said court at its next session, if no sufficient cause to the contrary be shown, and when confirmed, shall be recorded by said Clerk at the expense of said company, but if set aside, the said court may direct another inquisition to take place in the mode before described, and such inquisition, shall describe the property taken or the bounds of the lands condemned, and the quantity or duration of the interest in the same, valued for the company, and such valuation when paid or tendered to the owner or owners of said property or his, her or their legal representatives, shall entitle the said company to the estate and interest in the same, thus valued as fully as if it had been conveyed by the the owner or owners of the same, and the said valuation if not received when tendered, may at any time thereafter be received from the company, without cost by the said owner or owners, his, her, or their legal representatives; *provided*, that no private property shall be taken by said company for the use of said road, without just compensation as agreed upon between the parties, or awarded by the jury, being first paid or tendered to the party entitled to such compensation; *and provided*, that no timber of any kind shall be cut on any land other than the bed of the rail road by the company, or taken by them or any of their agents or employees, for the use of said rail road, without the consent of the owners; *and provided further*, that all the costs and expenses that accrue in consequence of the condemnation of any lands or material for the use of the said rail road, shall be paid by the said rail road company.

Provisos:

Sec. 12. *And be it enacted*, That whenever in the construction of said road or roads it shall be necessary to cross or intersect any established road or

ways, either public or private, it shall be the duty of the said President and Directors of said company so to construct the said road across such established road or way, as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the lands of any individual it shall also be their duty to provide for such individuals proper wagon ways across said road or roads, from one part of his lands to the other, and whenever any road or roads may hereafter be authorized to be made by the Legislature, when it may be necessary to cross said railroad, the company shall make or cause to be made a proper and convenient way for said road to cross, the expenses of which shall be paid as the Legislature may direct.

Entitled to
damages.

Sec. 13. *And be it enacted*, That if the said company should neglect to provide wagon ways across said road as required by the eleventh section of this act, it shall and may be lawful for any individual to sue said company, and be entitled to such damages as a jury may think him or her entitled to for such neglect or refusal on the part of said company.

Cars to run
at regular
times.

Sec. 14. *And be it enacted*, That said company shall start and run their cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient and full accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto be offered for transportation at the place of starting, and at the usual stopping places for receiving and discharging way passengers and freight for that train, and shall take, transport and discharge such passengers and property at, from and to such places on the due payment of the freight or fare legally authorized therefor, and shall be liable to the party aggrieved in action for damages for any neglect or refusal in the premises.

Whistle to be
sounded.

Sec. 15. *And be it enacted*, That a steam whistle shall be attached to each locomotive engine and be sounded at least one hundred rods from the place where the railroad shall cross any road or street, except in cities, and be sounded at intervals until

it shall have crossed such road or street, under the penalty of thirty dollars for the neglect of the provisions of this section, to be sued for before any Justice of the Peace of the Election District in which such neglect may happen in ten days after such penalty was incurred, one-half thereof to go to the informer, and the other half to the county in which such neglect may happen, and said company shall also be liable for all damages which may be sustained by any person by reason of such neglect, and all penalties imposed by this act may be sued for in the name of the State, and if such penalty shall be for a sum not exceeding one hundred dollars, then such suit may be brought before a Justice of the Peace, and may be commenced by serving a summons on any Director or Engineer of said company.

Sec. 16. *And be it enacted*, That the said company shall be entitled to charge as tolls a sum not exceeding four cents per ton per mile, on all goods, merchandize or property of any description whatsoever transported on said railroad, and also a sum not exceeding four cents per mile for each passenger whom they may transport on said road authorized to be built by this act. Tolls.

Sec. 17. *And be it enacted*, That the said President and Directors shall, annually or semi-annually, declare and make such dividends as they may deem proper of the net profits of the company, after deducting the necessary current and probable contingent expenses, and that they shall divide the same among the stockholders of said company in proportion to their respective shares. Dividends.

Sec. 18. *And be it enacted*, That if any person or persons shall wilfully, by any means whatsoever, injure, impair or destroy any part of any railroad constructed by said company under this act, or any of the necessary works, buildings, carriages, vehicles or machinery of said company, such person or persons so offending shall each of them for every such offence forfeit and pay to said company the actual damages sustained, which may be recovered in the name of said company by an action of debt before any Justice of the Peace, or the Circuit Court of the county in which such dam- Penalty for destroying the property of company.

ages shall be sustained, and also be subject to an indictment in the Circuit Court for the county where such offence may be committed, and upon conviction of such offence shall be punished by fine and imprisonment in the discretion of said court.

Road to be
commenced
and finished.

Sec. 19. *And be it enacted*, That if this road shall not be commenced in two years from the passage of this act, and shall not be finished in ten years from the time of its commencement, then this act shall be null and void.

Banking priv-
ileges prohib-
ited.

Sec. 20. *And be it enacted*, That nothing in this act shall be so construed as to authorize the said company to issue any note, token, script or other evidence of debt, to be used as currency, and the Legislature hereby reserves the right to alter, amend or repeal this act at pleasure.

Empowered
to subscribe.

Sec. 21. *And be it enacted*, That a majority of the Commissioners of Washington county, and the Mayor and City Council of Baltimore, be and they are hereby each authorized and empowered to subscribe in behalf of said county or said city, respectively, to the capital stock of the said Washington County Railroad Company, such amount not exceeding two hundred and fifty thousand dollars, for said county or the said city, as they may think proper in their discretion; and in payment of said subscription to issue bonds in the name of said county or said city, and to sell the same for the payment of the amount so respectively subscribed, at such times and in such instalments as may be approved by a majority of the said Commissioners or said Mayor and City Council for the time being, each of said bonds to be accompanied by coupons for the interest thereon, at the rate of six per cent. per annum, payable half-yearly.

Authorized to
levy.

Sec. 22. *And be it enacted*, That a majority of the Commissioners of said county and the Mayor and City Council of Baltimore, be and they are hereby respectively authorized and directed to levy upon the real and personal estate of said county or city such amount as may be necessary for the payment of the debts and interest, evidenced by the bonds of said county or city, respectively, at the times therein stipulated for the payment thereof, the said taxes to be levied and collected as other taxes in said county or city are levied and collected.

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Sec. 23. *And be it enacted*, That a majority of the Commissioners of said county, or the Mayor or City Council of Baltimore, subscribing as aforesaid, be and they are hereby authorized, at any time or times, to sell or pledge the shares of capital stock so subscribed by said county or city, respectively, or any part thereof, and to apply the proceeds of said sales or pledges together, with the dividends accruing on said shares of stock to the payment of said bonds or coupons, and in exoneration of the liability of said county or city respectively, thereon.

May sell or
pledge stock.

CHAPTER 335.

AN ACT to amend the charter of the Philadelphia, Wilmington and Baltimore Railroad Company, by repealing so much of the act passed at January session, eighteen hundred and fifty-three, chapter one hundred and thirty-eight, as requires said company, in building a bridge over the Susquehanna river, to provide for the general travel and transportation other than that by the railway.

Passed March
9, 1864.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That so much of the act of January session, eighteen hundred and fifty-three, chapter one hundred and thirty-eight, as requires the Philadelphia, Wilmington and Baltimore Railroad Company, in the construction of their bridge over the Susquehanna river, to make provision for the passage over said bridge of the general travel and transportation other than by the railway, be and the same is hereby repealed.

Repealed.

Sec. 2. *Be it enacted*, That the said company shall be and they are hereby required to stop every regular train of cars passing over said bridge at each end thereof, long enough for passengers to

Trains shall
be stopped.

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IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY, MARYLAND

-----X

BENJAMIN ESTES, :

CERTIFIED COPY

Plaintiff, :

v. :Case No.:

JUSTIN HOLDER, :C-21-CV-20-000430

:

Defendants. :

-----X

DEPOSITION OF FREDERIC FREDERICK,

ZOOM VIDEOCONFERENCE

Tuesday, April 27, 2021

9:00 a.m.

Atkinson-Baker, a Veritext Company

(800) 288-3376

www.depo.com

Reported by: Sydney Crawford, RPR

File No.: AF03233

1 Deposition of FREDERIC FREDERICK, held at
2 the offices of:

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ZOOM VIDEOCONFERENCE

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Pursuant to agreement, before Sydney
Crawford, Notary Public in and for the State of
Maryland.

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF, JEFFREY YOUNG:

AARON D. NEAL, ESQUIRE

McNamee Hosea

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ON BEHALF OF DEFENDANT, DEENA HOLDER

AND UNCLE EDDIES BROKEDOWN PALACE, LLC:

MATTHEW B. RUBLE, ESQUIRE

MATTHEW B. RUBLE, P.A.

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1 A P P E A R A N C E S (Continued)

2

3 ON BEHALF OF DEFENDANT, JUSTIN HOLDER:

4 JUSTIN HOLDER, PRO SE

5

6

7

8 ON BEHALF OF DEPONENT, FREDERIC FREDERICK:

9 SARAH JAMES, ESQUIRE

10 Carr Maloney, P.C.

11 2020 K St NW

12 Suite 850

13 Washington, DC 20006

14 (202) 310-5539

15 sarah.james@carrmaloney.com

16

17

18 Also present: Adam Greivell, Esquire, Host

19

20

21

22

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P R O C E E D I N G S

WHEREUPON,

FREDERIC FREDERICK,

having duly been sworn to tell the truth, the
whole truth and nothing but the truth, testifies
as follows:

EXAMINATION

BY MR. HOLDER:

Q Good morning, Mr. Frederick.

How are you today?

A Good morning. Fine. Thank you.

Q I was sued by Benjamin Estes for six
counts, trespassing, damage of trees. Under the
Natural Resource Article 5-409, a public nuisance,
quiet title and ejectment.

Are you familiar with that lawsuit?

A Only what you just told me and by
deposition. I did not see anything and I -- I'm
not aware of anything more.

Q Okay. Have you spoken to Benjamin Estes
in the last year?

1 A Yes. I have.

2 Q None of those conversations were about
3 the lawsuit?

4 A They were not about the lawsuit.

5 Q Okay. Were the conversations in regards
6 to Mr. Estes putting a fence on his property?

7 A Yes. They were. He wanted to have his
8 line remarked and he said he may try to put a
9 fence on that property.

10 Q Okay. I'd like to show you a drawing
11 that Mr. Neal sent me depicting the fence that
12 Mr. Estes wished to put on his property. It's --
13 I believe it's actually going to be a -- a -- yes.
14 Do you see that drawing with the blue on it,
15 Mr. Frederick?

16 A Yes.

17 Q Okay. And from the conversations you
18 had with Mr. Estes, is that approximately the
19 locations he had discussed the -- putting the
20 fence with you?

21 A The only part that I understood was
22 going to be, and I don't know how to do this over

1 a Zoom meeting, but it was going to be on the west
2 side of the creek. That -- move that pointer.
3 Right there. No. Not there. That's very steep.
4 On the southern part of that blue line on the west
5 side of the creek, it's very steep, and I don't
6 know how he would put a fence there, but -- but
7 yes, it's that line. Go north from there. That
8 area right there.

9 Q Okay. That area right there is where
10 you had considered -- so that -- that area there,
11 later on, we're probably going to talk about a
12 deed overlap, just briefly, and would that just be
13 the western, kind of metes and bounds of that deed
14 overlap area that you were considering?

15 A Yes. It would be his western line, your
16 eastern line.

17 Q Okay. And when you say, "mine," you're
18 talking about the properties I've managed that are
19 owned by Deena Holder and Uncle Eddies Brokedown
20 Palace, LLC?

21 THE WITNESS: Was there an interjection
22 there or...

1 MS. JAMES: There was an objection. How
2 was he -- how would he know the -- the property
3 owners based on this map unless he -- it's based
4 on an independent recollection.

5 MR. HOLDER: Yeah, Ms. James, I
6 apologize. Me and Frederick -- Mr. Frederick have
7 known each other for a while and worked together
8 for a while and you guys are all new. So this is
9 my first deposition. I apologize if I'm a little
10 rough here. So let me go through it a little bit
11 slower. I'd like to bring up Mr. Neal's RFA2 that
12 he had sent to me. And his first question. If
13 the host could do so for me. It would be RFA2,
14 Mr. Greivell. Yeah. Okay. Right there.

15 So, Mr. Frederick, this is part of a
16 request for admissions that Mr. Aaron Neal had
17 sent to me. Are you familiar with the request for
18 admissions?

19 A No. I'm not.

20 Q Okay. It's a -- it's a discovery tool
21 you use and you basically confirm or admit, and he
22 just attached the picture that I thought would be

1 very helpful for this deposition.

2 Do you recognize that plat?

3 A I do.

4 Q Okay. Can you tell me the owners that
5 are depicted on that plat?

6 A The yellow area for my survey would be
7 Ben Estes, and on the west side, we're looking
8 for -- there's the north arrow, right below my
9 seal. And on the west side of the yellow, would
10 be, I believe Deena Holder.

11 Q Okay. If I said it was Uncle Eddies
12 Brokedown Palace --

13 A Yes, you're right. Yes. I believe that
14 it was put in an LLC.

15 Q Yes.

16 A Uncle Eddies Brokedown Palace, LLC. I
17 did not look any recent deeds, so I don't know
18 what title it may be in, but when I did this
19 survey, I did it for a Deena Holder and Uncle
20 Eddies Brokedown Palace, LLC.

21 Q Okay. I -- I see that. And if we were
22 to zoom in on the two smaller parcels, they would

1 both be Deena Holder and the southwestern area
2 here?

3 A I believe so.

4 Q Okay. And if I was to say the yellow
5 area would be an area we discussed as deed overlap
6 previously, would that be accurate?

7 A Yes.

8 Q Okay. All right. So if I wanted to
9 just kind of give somebody a rough idea of the
10 land depicted on this plat that was the deed
11 overlap area, Deena Holder's property, and Uncle
12 Eddies, would it be fair to say that it starts at
13 the railroad bridge on the east side of the
14 property, follows all the way around the creek to
15 the railroad bridge on the west side of the
16 property, and then follows the old railroad line
17 straight back to the point of the beginning?

18 MR. NEAL: Objection. Go ahead.

19 A Well, if we're talking about Uncle
20 Eddies, it starts on the west side of the creek.
21 The deed -- the historic deed said it always
22 started on the west side and the stone near the

1 west abutment, and then it went -- that -- that
2 deed said it went down the creek and then after a
3 call or two, it went to a stone. It wasn't clear,
4 but that stone, in my opinion, had to be on the
5 west side based on the deed -- historic deeds
6 before Mr. Estes. And then it stayed on the
7 ground. And, Mr. Holder, you may recall I met you
8 out there, and showed you that you didn't own the
9 creek as you go further around the creek beyond
10 Estes. And you approached a neighbor and you were
11 able to acquire that additional land from him so
12 you could own to the creek.

13 Q So now you would say that Uncle
14 Eddies -- and when you say "me," you meant me as
15 manager of Uncle Eddies; right?

16 A Yes. Correct. Correct.

17 Q I know. I just want to specify for
18 everybody else here, too. Okay.

19 So once Uncle Eddies made the purchase
20 of Parcel 414, we talked about that maybe this
21 meeting you're talking about with us happened
22 maybe late March of 2018, would that be accurate?

1 A I don't recall the exact date. I do
2 know it was in 2018. If we can zoom in -- can the
3 host zoom in on my signature. So that says April.
4 So yes, it could have very well been March.

5 Q Okay. And I'll just --

6 A I don't know the exact date.

7 Q Well, this plat was done a year after
8 the initial purchase, so we would have pictured --
9 you did a boundary survey previous to this?

10 A Yes.

11 Q And that, I was right about April like
12 that. So it just happened to be a year, but I --
13 in between late April and -- I'm sorry, late March
14 and April, we met on the property. And at that
15 time, had I already had a contract with Brian
16 Smith to purchase the property?

17 (Reporter clarification.)

18 Q I said at the time we met in the
19 property in late March or early April of 2018 to
20 go over the boundary survey, where Mr. Frederick
21 talked about us meeting by the deed overlap area,
22 had I already had the contract to purchase Parcel

1 414 set up with Brian Curtis Smith?

2 MS. JAMES: Objection. You can answer.

3 A I -- I do not know that to be the fact.
4 I don't think you did, because I pointed out that
5 you didn't own there. And you said you knew him
6 and you would contact him about acquiring that.

7 Q Okay. And -- and we did -- at the
8 settlement, I did, for Uncle Eddies, purchase the
9 Parcel 414, and once we added that land to the
10 Parcel 127, it would have been 28 Antietam Drive;
11 is that correct?

12 MS. JAMES: Objection. You can answer.

13 MR. NEAL: Objection.

14 A Host -- hostess, could you zoom in, so I
15 could see the parcel numbers. If you can zoom in,
16 okay. And slide it down just a little bit. I'm
17 looking for a parcel number that I think there is
18 one someplace. Yes. So Parcel 127 is on the
19 south side. Parcel 414 is what you bought from
20 Mr. Smith.

21 Q Right. And then Plat 10955, that was a
22 reconfiguration. Can you explain how those

1 boundaries were reconfigured, just briefly?

2 A So you -- you -- you originally
3 purchased Parcel 127 that had the existing
4 dwelling on it known as number 28, I guess,
5 Antietam Drive?

6 Q Yes, sir.

7 A Then you bought additional land a little
8 bit later from -- and I don't know when you bought
9 it, by those liber folios there, I can't -- I
10 can't tell, but you got this land from Mr. Smith,
11 and it was Parcel 414. And so you changed the
12 boundaries, you had me change the boundaries of
13 just them so that Parcel 414, which was very
14 small, became -- the remaining lands became very
15 large, and Parcel 127, which was the -- the mother
16 parcel of -- of that 28 East Antietam center one,
17 East Antietam, that drive, Antietam Drive, you
18 made that small.

19 So 28 Antietam Drive became the small
20 parcel and Parcel 414 was going to become the
21 large parcel.

22 Q Okay. That's -- that's exactly how I

1 remember it, and I appreciate you explaining that
2 for everybody, sir.

3 So when you did the description for this
4 plat, you came down behind the yellow house, which
5 is going to be on the -- on the top left of our
6 drawing, Deena Holder, 25 Antietam Drive, with
7 your description. And then you came into a point
8 into the Little Antietam Creek; does that sound
9 familiar?

10 A No. That house didn't go to the creek
11 at first, and my drawing there doesn't show it
12 going to the creek. It was high up on that bank.

13 Q Okay.

14 A And then it went west. That, it looks
15 like, 247 point something to go out into the creek
16 and to pick up that additional land that you got
17 from Mr. -- did you say it was Smith?

18 Q Yes. Brian Curtis Smith.

19 A Brian Curtis Smith.

20 Q Yes.

21 A Okay.

22 Q And then we're in the creek for about 12

1 calls; does that sound right?

2 A Yeah. I don't know the exact number,
3 but, yes, where the point is going right there,
4 whatever the number is, it comes all the way
5 around into the creek. Correct. Correct. All
6 the way out to L-10.

7 Q Okay. And did -- you're very specific
8 in the description that from that point in the
9 creek, we go back into land?

10 A Yes.

11 Q Okay. So for the 12 calls we just went
12 down the creek, are -- were you intending them to
13 be a fixed nature, or do they sort of meander as
14 the creek changes?

15 A Well, that's a matter of law. I can't
16 change it. You know, there is -- there is law
17 that if a creek really changes, you know, the
18 law -- the law can change with it. But I follow
19 the deeds, so I don't --

20 Q Okay.

21 A I follow the deeds.

22 Q Did you believe that the intent of

1 parcel -- the deed for Parcel 414 was to maintain
2 the creek as the boundary for those 12 calls?

3 A Well, our new -- our new boundary is for
4 it to be in the creek. Yes, that's what -- that's
5 what you wanted and when I wrote that description,
6 we followed the creek.

7 Q Okay. And would -- and would you say
8 the creek is -- is the metes and bounds in there?

9 MR. NEAL: Objection.

10 A Yes. Someplace in the creek is the
11 metes and bounds between you and Mr. Smith. That
12 was the intent.

13 Q Okay. And then we go down -- I'm sorry,
14 I'm going back to L10 now. And we're going to
15 make a few calls on land. It looks like, one,
16 two, three, four calls on land, and then you --
17 you safely go back into Antietam Creek?

18 MS. JAMES: Objection.

19 A Correct.

20 MS. JAMES: You can answer.

21 A Correct. I believe that to be correct.

22 MR. HOLDER: Ms. James, what was the

1 reason for your objection, if you don't mind me
2 asking?

3 MS. JAMES: You're putting words in his
4 mouth.

5 MR. HOLDER: I understand. I'll be more
6 direct with the questions. I apologize.

7 Q So the next -- how many calls until we
8 hit another -- until we get out of the creek here,
9 Mr. Frederick?

10 A So when you go in the southwest
11 direction to 148.5 on the north side -- correct,
12 on the north side of that or the right side, as
13 I'm looking at it. On the right side, that point
14 is in the creek, and then as you go to the left,
15 that point is going to be either on the edge or
16 very close. That is an area that, you know, maybe
17 part of that bank had washed away. I believe that
18 point is either right on the edge of the bank or
19 in the creek.

20 Q Okay. And then the next point, where is
21 that point at?

22 A Then it follows -- you know, it follows

1 up along there. And it goes up to an iron pin
2 near the west abutment of the bridge crossing the
3 Antietam Creek.

4 Q And is -- is that call in the creek; is
5 that call on land?

6 A That call is on land. That was a call
7 in your deed. It said starting in the west -- at
8 a stone at the west abutment on the west side of
9 the creek, and that matched Mr. Remsberg's calls,
10 which just transferred forward, forward, forward.
11 Remsberg, Jolis, Estes, Estes.

12 Q You're talking about Tommy Remsberg,
13 sir?

14 A I -- I don't know his first name. I
15 thought it was Ellis.

16 Q That was Tommy's father. Okay.
17 So it was a predecessor to Mr. Estes,
18 though?

19 A That's correct.

20 Q Okay. And you did this survey work
21 first when you -- when you did Plat 4040, or were
22 you -- was that the first time you had done survey

1 work in this area?

2 A In 1990, Mr. Ellis Remsberg asked me to
3 survey his property. He was going to convey it.
4 I believe the conveyance happened before I got to
5 finish the survey. He sold it to, I think, a
6 Richard Jolis. And then Mr. Jolis followed
7 through -- we may have already started. But they
8 had settlement before I could finish because their
9 deed, Jolis' deed matches Remsberg's deed, and
10 then we did the -- we did -- we finished the
11 surveying and we did some subdivision work for
12 Mr. Jolis, where he reconfigured the parcels, you
13 know, to what he wanted to do with them. And if
14 you want to bring up that plat. If I could see
15 that, please.

16 Q Is that number 4040?

17 A I believe so, can I see the title?
18 Bottom right-hand corner, can you zoom in on that?
19 Yes, Richard Jolis and then slide it to the --
20 slide it to the right or -- that's it. Keep
21 sliding. I want to see the date. And right
22 there, '93. So I guess I didn't do the plat work

1 until '93, and I don't know -- zoom over there to
2 the surveyor certificate where you see my name --
3 if you can zoom in there. Okay. Perfect.

4 And so Mr. Jolis got it from -- what
5 conveyed by Mr. Jolis and to Mr. Jolis. There was
6 something before then. I think I did a boundary
7 before this that is just a boundary survey, so it
8 wasn't a recorded plat. And then in '93, we
9 actually did the -- that subdivision to
10 reconfigure their land.

11 MR. NEAL: Can I interrupt for a second?
12 Are we marking these documents as exhibits to
13 attach them to the transcript or are we just
14 referring to them? Well, what are we doing?

15 MR. HOLDER: Well, Mr. Neal, the first
16 two pieces came from your RFAs in your discovery,
17 and the second two pieces are pulled out of land
18 records, but I can certainly mark them for
19 discovery for you right now, if you'd like.

20 MR. NEAL: I understand what they are.
21 I'm talking about marking them as part of this
22 transcript.

1 MR. HOLDER: Let -- let me do that. I
2 neglected to do that. So the first document, if
3 the host could pull that up, with the fence
4 drawing.

5 (Exhibits 1 through 5 were marked for
6 identification.)

7 MR. NEAL: So the first Exhibit 1, would
8 be Bates stamped S897; Exhibit 2 would be request
9 for admission to -- from Estes to Holder; Exhibit
10 3 would be Plat 4040.

11 MR. HOLDER: Exhibit -- okay. Yes.
12 Exhibit 3 would be Plat 4040. Correct. And then
13 Exhibit 4 is going to be a -- toward B --

14 MR. NEAL: I'm sorry. Exhibit 3 would
15 be 10995, and then Exhibit 4 would be 4040, and
16 then Exhibit 5 would be the confirmatory breach.

17 MR. HOLDER: Yes. Yes.

18 BY MR. HOLDER:

19 Q Mr. Frederick, is this the confirmatory
20 deed that you were discussing that you might have
21 done for Mr. Remsberg in 1990?

22 A Well, that's the deed, I think he

1 conveyed it before I got to finish my survey. Let
2 me see the description.

3 Q Is it going to be Parcel 1 or Parcel 2;
4 do you remember?

5 A Oh, there we go. Okay. So go back to
6 confirmatory. I think Mr. Remsberg officially
7 initially conveyed it to Mr. Jolis in June of 28th
8 (sic), 1990, and then I was finishing my survey,
9 and then it looks like they did a confirmatory,
10 and that is -- that is the confirmatory deed from
11 Remsberg and Hawkinberry to -- wait, you moved
12 it -- to Richard and -- Richard Jolis and Ann
13 Matheson. And so that -- that is my first survey,
14 1990, of all this property.

15 Q And -- and did you prepare the
16 description for this deed for --

17 A I did.

18 Q -- for Mr. Remsberg?

19 A Yes. I did.

20 Q Okay. Do you mind if we just look at
21 that description as it approaches -- the landowner
22 of it would have been at that time, Harry Hudson;

1 is that correct?

2 A I'm not certain who owned on the other
3 side. Yes, I think it was Mr. Hudson. Again,
4 I'm looking at my original survey, which is not a
5 recorded survey, but I have a -- a boundary of it.
6 It was dated 11/5/1990, so go ahead. I got a
7 drawing to look at with that description.

8 Q Okay. Do you see where it says,
9 "Baltimore and Ohio railroad"? About six --

10 A Yes.

11 Q Okay. And then you're going to cross
12 the Little Antietam Creek to an iron pin and cap
13 set?

14 A Yes.

15 Q Did you set that pin?

16 A Yes. We did.

17 Q Okay. And then it's going to run --
18 what's that say next, sir?

19 A That's on lands in Harry C. Hudson, Jr.,
20 liber 408, folio 137, North 25, 0321 East 280.503
21 to a point. Thence north 340321 east 148.503 to a
22 point. You want me to keep reading?

1 Q Well, I'm -- what I'm trying to discern
2 is on the 10955 description, you went in the creek
3 and then you were very clear when you came back
4 out on land, but on this deed, you -- you said you
5 went along the railroad, then you went along the
6 west bank of the creek and along the lands of
7 Harry C. Hudsell, but you never really come back
8 out on the -- of the bank or the creek, can you
9 just explain that a little bit?

10 A I do come back on the very next call.

11 Q Okay.

12 A So if you look at the previous one that
13 you and I were looking at where -- the 140.50
14 feet, I told you one of those corners, I believe,
15 was in the creek, and the other is either right on
16 the edge of the bank or in the creek. So let's go
17 to the -- and that's that north 34-03-21 east
18 148.50 feet, and I say "to a point," because we
19 didn't set the corners at that time yet, and I
20 didn't know if it was going to be exactly in the
21 creek or on the -- on the bank, so we just called
22 it to a point.

1 But then the next call, this is -- this
2 is the importance of that, one of your previous
3 exhibits where you highlighted it in yellow. The
4 next call thence north 2 degrees, 51 minutes, 25
5 seconds east 203.44 feet to a fence post. So that
6 fence post is on land, of course, and it's on the
7 west side of the creek.

8 Thence north 1-14-19 west, 57.27 feet to
9 a fence post. Thence north 55-59-35 west,
10 55.83 feet to a blazed fence line tree.

11 Now, that's important to surveyors,
12 because we didn't place it. It was placed a long
13 time ago and it seemed very obvious to me that
14 the -- the Remsbergs or predecessors to the
15 Remsbergs had known that they went across the
16 creek. Their deed actually called -- if you go to
17 their deed, it was totally on the east side and
18 then it came down to the creek and then it says,
19 "thence crossing the creek," and it went across
20 the creek.

21 And then it followed a couple courses
22 until it went, it didn't say where, but it

1 actually went back into the water.

2 Q Okay.

3 A So there's no doubt that their deed said
4 they went across the creek to the west bank, and
5 we found evidence that blazed -- blazed fence line
6 tree over there and fence line back in 1990.

7 Q Okay. I'm just going to try to go
8 through this a little bit. So when you say
9 "blaze," can you just explain blaze a little bit
10 for me, please?

11 A Yes. Back in the day and still today,
12 it's a -- it's a method that surveyors would take
13 a sharp ax or a machete and they would strip off a
14 little segment of bark, a little segment being
15 about, you know, anywhere from four to eight
16 inches and they would put a strike there, because
17 it would create a scar in the tree.

18 And it would indicate that a surveyor
19 was marking that as the corner is here or very
20 close to here.

21 Q Okay. And then I had two questions on
22 the fence posts above and I'm going to -- we had

1 done another deposition and looked at a survey and
2 you said, "Recovered fence post." But on this
3 one, you didn't say "recovered."

4 Were these fence posts called for in the
5 prior deed?

6 A No. I don't believe they
7 were. "Recovered" means this -- and we don't --
8 you know, surveyors aren't always consistent if
9 they say "fence post" or "recovered fence post."

10 Typically, if I say recovered, that
11 means it was a call and I recovered that call. If
12 I just say fence post, that means I found clear
13 indication of possession along there and I'm
14 calling that fence post out. I do not believe the
15 fence post itself was a call in those old deeds,
16 but it was there in 1990 when I did it and it was
17 the only line of possession visible. And, again,
18 these were old deeds, they did not mathematically
19 close. So, you know, we tried to match, you know
20 found monumentation or possession where we can,
21 that we believe is intending to follow the
22 original boundary lines.

1 Q So even though the old deed doesn't
2 close, the fence you found was -- was probably
3 within a few feet of where the courses and
4 distances were, and most likely part -- probably
5 the possession line?

6 A We believe it was the possession line.

7 Q Okay. Now, were you on the site, or did
8 you just send your guys out?

9 A Back then, I was not on the site. I
10 sent my men out.

11 Q Okay. Did they -- did they tell you
12 anything that you remember that would be, like,
13 evidence of possession of the Remsbergs?

14 MS. JAMES: Objection. You can answer.

15 A It was 1990. I -- I don't remember
16 exactly what they told me back then, but my
17 decisions were based on what they found and
18 questions that I would have asked them. But I
19 have no recollection of the exact conversations in
20 1990.

21 Q What are some of the facts you would
22 look for when you're determining possession?

1 MR. NEAL: Objection. Go ahead.

2 A I would look for first the calls in the
3 deed in this case. It crossed over to the west
4 bank, so I knew that the intent of that deed was
5 to cross over the creek to the west bank. And,
6 you know, we would look for stones, but we didn't
7 find the stone there, but we found a blazed tree
8 indicating somebody in history, a surveyor in
9 history, you know, marked that or blazed it to
10 say, okay, the corner is here and then there was
11 the possession of fence. And the fence went
12 across that little corner of land, like, you had
13 highlighted in yellow, and it went back into the
14 creek.

15 Q Did your guys mention that that corner
16 of land in yellow was an island?

17 A They did not mention that and when I met
18 with you, I don't recall it being an island. I
19 believe it was attached to the land on your side
20 of the creek.

21 Q That -- that's correct. In 2018, there
22 was no water there, sir. Thank you for pointing

1 that out.

2 But in 1990, if the creek was higher,
3 could there have been water there?

4 MS. JAMES: Objection.

5 MR. NEAL: Objection.

6 Q Okay. You don't -- you don't have to
7 answer that, sir.

8 MS. JAMES: Mr. Frederick, you can
9 answer if you know the question -- if you know the
10 answer, excuse me.

11 A What Mr. Holder, I believe, is alluding
12 to is that, you know, if there was -- if the water
13 was at flood stages would the water be higher.
14 The answer was yes.

15 Would it cover some of or all of that
16 land that is in dispute, it -- it probably could
17 and probably would. If there was a dam
18 downstream, which Mr. Holder may be alluding to,
19 would that be underwater, yes, it could. Which
20 would lead me to believe that if the old deed of
21 Remsberg said across the creek to land and the
22 water was higher, it would move the boundary even

1 further into what is now Mr. Holder's land.

2 So we found possession of where the
3 predecessors were using to. We found the blazed
4 tree, we found the fence. And we held that,
5 believing that that was what everybody was using
6 as the property line and making sense with the
7 deed of record. So you said if the water -- if
8 the water was higher, it would have -- it would
9 move -- and excuse me a second.

10 Q Host, could you bring up Plat 10955,
11 even if it's just the RFA here.

12 On Plat 10955, this crosshatch, the
13 crosshatch lines running from, I don't know, maybe
14 the bottom left to the sort of the top right, does
15 that delineate the 100-year floodplain?

16 A Yes. It does.

17 Q And then there's a topo so as the lines
18 get close, is that delineating a steep bank?

19 A Yes. You're talking about the -- you're
20 talking about the contour lines, just to be
21 perfectly clear. And yes, as they get closer,
22 that means it's steep.

1 Q Thank you. I appreciate you clarifying
2 that for me, sir.

3 Host, could you zoom in on the deed
4 overlap area again, please? So if we examine
5 those contour lines, right in the area of where it
6 says 203.44 foot; do you see that?

7 A Yes.

8 Q That's -- that's getting steep quickly
9 so the water would have to rise significantly
10 to -- to really get into that boundary, if that
11 makes sense?

12 MS. JAMES: Objection. You can answer
13 if you know that -- if you know the answer.

14 A Well, it looks to me like -- and can you
15 zoom in a little bit, just so I can see what the
16 contour interval is, if it's 1 foot or 2 foot.

17 Zoom out, I'm sorry, the other way. I
18 don't see what -- but I'm going to assume they're
19 2-foot contours, because -- so, now, zoom back in,
20 please, to that area. It looks like the water
21 would have to rise two, four, six, eight, ten feet
22 approximately to -- to flood stage.

1 Q Okay. Mr. Frederick, and I really
2 appreciate it. That's why you're a great
3 surveyor. You know the survey well and your
4 information's highly appreciated.

5 So the disputed area is basically plat
6 from your survey; is that correct?

7 A Yes. It's -- it's low line, yes, and
8 not steep. When you say, "The disputed area," if
9 we're talking about L11, 12, 13, and the 203.44,
10 if we're just concentrating on that, yes, it is --
11 it's -- it's all in the floodplain.

12 Q Yes. Thank you. And that -- that is.
13 I meant to say the overlap area. I apologize for
14 changing the terminology. So when you say you
15 would lose boundary, is that because a repairing
16 owner is entitled to the accretion and recession
17 and subject to the reliction and submersion of
18 their property?

19 MS. JAMES: Objection. He doesn't know
20 what riparian rights are, and if you do, you can
21 answer, but --

22 A I really don't. My understanding of it

1 is as things change like that, that could be a
2 matter of law. Not a matter that a surveyor can
3 just arbitrary -- arbitrarily change.

4 Q Okay.

5 A That would be my understanding.

6 Q And so on this survey, 10955, is
7 everything on here a fact or is it -- is it an
8 opinion?

9 MS. JAMES: Objection. You can answer,
10 though.

11 MR. NEAL: Yeah. Objection.

12 A That is where I believe the intent of
13 the deeds on both sides, Estes and Holder or their
14 predecessors, would have that line.

15 Q So that's your opinion of where the
16 grantor's intent of the line was?

17 A That is correct.

18 Q Okay. And I respect your opinion, and
19 you're not here to give your opinion, so I'm not
20 going to ask any questions about that line, sir.
21 What I would like to ask you about is some of our
22 communications that we had regarding the deed

1 overlap; is that okay?

2 A Are you asking me, or are you asking the
3 attorneys?

4 Q Well, I was asking you and the attorneys
5 didn't object. So I would like the host to bring
6 up the February 13th, 2020 letter that you wrote
7 to me.

8 MR. NEAL: Is this going to be
9 Exhibit 6?

10 MR. HOLDER: Yes. This'll be Exhibit 6,
11 Mr. Neal.

12 (Exhibit 6 was marked for
13 identification.)

14 Q Do you -- do you see that letter on the
15 screen, Mr. Frederick?

16 A Yes. I do.

17 Q Okay. Are you familiar with this
18 letter, it says February 13th, from 2020, to
19 Justin Holder and it's REF -- FA survey dated 2018
20 for Uncle Eddies Brokedown Palace, Justin Holder
21 and FSA original survey, dated 1933 for Richard
22 Dulles, and recorded at Washington County, Plat

1 No. 4040?

2 A I remember the letter well.

3 Q Do you remember why I had you write that
4 letter?

5 A I do. You asked me -- you had a court
6 date. You and Mr. Estes got into some kind of
7 altercation. I don't recall the details. And you
8 were going to go to court. There was some court
9 hearing over it. And -- and it was down there at
10 that land we were just talking about, the overlap
11 in yellow, and you wanted me to write a letter,
12 based on the deed that you gave me, which was the
13 predecessor and titles deed that, Is there any
14 chance that that land could be considered part of
15 yours? And you said, if you write that letter for
16 me, that you and Ben were going to try to work
17 things out and so I wrote that letter. I was
18 very, kind of, open about it, but honest, you
19 know, and you could possibly find another surveyor
20 that may disagree with my opinion, and that's why
21 the -- the courts make decisions when two
22 surveyors disagree. But I wrote that letter on

1 your behalf on your request, because you said if
2 it -- if it helped you out, you and Ben were going
3 to work this out. After your court date, you sent
4 me a text, you know, basically saying, Hey, thank
5 you. That's not the exact words, but that you and
6 Ben were going to go to mediation and -- you know,
7 it looked like things may worked (sic) out. That
8 may not be in the text, but that's what you led me
9 to believe.

10 Q Well, I really did appreciate the
11 letter. And I'd remind you that you were in a
12 significant amount of pain from your sciatic nerve
13 at that time and stayed late to write the letter,
14 and I really did appreciate it, Mr. Frederick,
15 that letter. And I did give Mr. Estes that
16 letter, and we did agree to mediation; however,
17 Mr. Estes never showed up.

18 MR. NEAL: Objection. Mr. Holder,
19 you're not testifying here. You need to ask the
20 questions.

21 MR. HOLDER: Thank you, Mr. Neal.

22

1 BY MR. HOLDER:

2 Q Mr. Frederick, did I tell you that
3 Mr. Estes never showed up for mediation?

4 MS. JAMES: Objection. Irrelevant.

5 MR. HOLDER: How -- how so?

6 MR. NEAL: Objection.

7 MS. JAMES: It's not relevant to
8 Mr. Frederick's deposition testimony.

9 MR. HOLDER: I'm questioning
10 Mr. Frederick about his interactions with
11 Mr. Estes, Ms. James.

12 MS. JAMES: He wasn't at the mediation,
13 so he wouldn't know.

14 MR. HOLDER: Nobody was at the
15 mediation; nobody showed up.

16 MS. JAMES: So it's irrelevant to this
17 deposition testimony.

18 MR. HOLDER: I think it is.

19 MR. NEAL: Well, we've objected. You
20 can ask the question, and he can answer it if he
21 knows. Unless somebody instructs him not to
22 answer, Mr. Holder, he can go ahead and answer the

1 question.

2 MR. HOLDER: I'm aware of that, and I'm
3 awaiting Mr. Frederick's response.

4 MS. JAMES: Can you repeat the question.

5 BY MR. HOLDER:

6 Q Mr. Frederick, were you aware that
7 Mr. Estes never showed up for the mediation we had
8 scheduled?

9 A I was not.

10 Q All right. Thank you, sir.

11 So in this letter, we sort of talk about
12 discrepancies in the survey or a potential of
13 alternative plotting of -- of a deed, can -- can
14 you explain how we would plot the deed
15 alternatively?

16 A There was a drawing that went with this;
17 could you bring it up?

18 Q Yes. Is that the drawing, sir?

19 A That is. Is the hostess controlling the
20 screen?

21 Q Yes.

22 A She's doing a fabulous job.

1 Q He sure is.

2 A She is doing a fabulous job.

3 So your deed said that it started on the
4 west bank at a stone near the west abutment. So
5 when I tried to plot this to -- to be -- you know,
6 to look at everything that could possibly make it
7 in the creek, the only line that matched perfectly
8 was the 148.50. That line, that distance right
9 there on your predecessor's deeds going back in
10 history and on Remsberg's deeds going back in
11 history, that line matched perfectly.

12 So I held that line and then I laid the
13 plotting of your deed, which, when I say, "your
14 deed," in -- in title, liber 154, folio 229, I
15 think it is. It's a little hard to read and it's
16 probably because of my writing. But -- yes, 229.

17 So when you go from the south side of
18 that 148.5 feet, it takes the line down the creek.
19 However, it contradicts the deed calls at the end
20 of that, because both your deed and Remsberg's
21 deed clearly say at a point on the west side of
22 the creek at the west abutment, which that can't

1 be in the creek. It's got to be -- you know, it's
2 a stone, it's at the abutment. It's got to be on
3 land, so it contradicts itself. But I show it
4 because I'm just trying to, you know, make a
5 picture of this old deed. And the only common
6 point line that I have is the 148.50 feet.

7 So going to the left on this picture as
8 we're looking at it, it's not really making sense
9 with the calls because that, where it terminates
10 at the left side, would have to be up on the
11 bank -- you know, at a stone on the west bank.

12 Then, let's go in the other direction.
13 So we'll go northerly, holding that same line and
14 that line, the deed plotting the red line, puts
15 it -- again, it looks like it's maybe just on the
16 west bank. You know, it looks like it's on the
17 west side, clearly on the west side, and I plotted
18 that line and then the next line. And if we keep
19 moving around -- if we could keep moving around
20 there.

21 And I think one of those calls say, "To
22 a stone." Well, if it's a stone, it's got to be

1 on land. So it has to be on the west side because
2 it's falling and following the west side of the
3 creek.

4 Q Okay.

5 A And that's what -- that's what that --
6 trying to make sense of that, I'm kind of forcing
7 it, you know, to fit in with something that I know
8 that -- that we feel good about. And the only
9 commonality we have is the 148.5 foot in both
10 those deeds.

11 Q Okay. I -- I appreciate your
12 explanation of that, Mr. Frederick, and we had
13 done some other work to try to, I'm going to say,
14 appease Mr. Estes, and I had you -- I didn't pay
15 you for this work.

16 Do you remember that work?

17 A Yes. You wanted to buy some land from
18 another neighbor.

19 Is that what you're talking about?

20 Q Yes. Host, could you pull up Plat 5109,
21 please? Just patient -- we'll mark the previous
22 exhibit with the FSA letter and drawings as

1 Exhibit 7, Mr. Neal, and we'll mark Plat 5109 as
2 Exhibit 8.

3 (Exhibits 7 and 8 were marked for
4 identification.)

5 Host, could you zoom in on the bottom
6 left area of the plat, please? Can you read that,
7 Mr. Frederick, the call that was now or formerly
8 Hudsell, Jr.?

9 A Yes.

10 Q Okay. Would -- would you say that that
11 area would depict approximately the quitclaim area
12 that we drew up?

13 A It was something -- you -- you wanted me
14 to go into -- who owns that property? I'm sorry.
15 I can't see that. North of Hudsell, it was going
16 to be -- do we know who owns that parcel?

17 (Simultaneous cross-talking.)

18 Q Just --

19 A The one that says, "Parcel to be
20 conveyed." That parcel right there. Justin, you
21 probably talked to him, so who would own that
22 parcel? Do you recall?

1 Q I thought it was Watkins?

2 A And I think you may be right. It is.
3 Robert and Debra Watkins, and you were going to
4 approach them. And you were going to try to buy
5 some land from them to exchange with Mr. Estes.
6 Now, what's of interest on that drawing right
7 there, which is not my drawing is the line north
8 22-50-44-37.74, that line right there, is going
9 into the creek.

10 Q Uh-hum.

11 A And then the continuation of it would go
12 across the creek and that matches my original
13 boundary for Jolis -- for Remsberg/Jolis/Estes.
14 And at that time, Fox, who did this survey that
15 we're looking at, clearly agreed with my boundary
16 and showed it like that. Now, what they don't
17 show is the creek, but that creek is following the
18 next two calls.

19 Q So --

20 A So L10 and L9 are in the creek and Fox
21 is -- they show that line continuing across and
22 L10 and L9 are matching what I have. And so I

1 believe what you wanted to, I believe -- this is
2 my assumption -- you wanted to buy some of that
3 from Mr. Watkins, and give it to Mr. Estes in
4 exchange with trying to negotiate with him to give
5 you that spit of land that's on the west bank
6 that -- that -- that he owns and that you would --
7 that -- that you would like to own.

8 Q Does -- does that sound like a
9 common-sense solution you might offer your
10 neighbor?

11 MR. NEAL: Objection.

12 A I -- I won't answer that. I have -- I
13 have no opinion on that. That would be purely
14 hypothetical on my -- on my suggestion.

15 Q Sure. Do you know of any way Mr. Estes
16 can access that land without walking through the
17 creek, the deed overlap area?

18 A I do not.

19 Q Okay. All right. And do you -- when
20 you initially did the survey in April of 2018, Old
21 Town Title called you and ordered the survey?

22 A Correct.

1 Q Did they provide you any title work at
2 all?

3 A They did not. A lot of title companies
4 don't provide me any title work at all. They ask
5 me to do a boundary survey, which is far different
6 from a ALTA survey.

7 Q And you're sure that they asked you for
8 a boundary survey and not an ALTA survey?

9 A I'm positive, because they would have
10 had to provide me the title commitment and
11 specifically Section V2 of the title commitment
12 for me to even contemplate doing an ALTA survey.
13 An ALTA survey is a -- a very elaborate survey
14 normally required when it is a commercial property
15 or a property that's -- that the bank is loaning
16 millions of dollars on. That's typically when we
17 see ALTA surveys being required.

18 Q Have you ever seen an ALTA survey for a
19 \$65,000, \$70,000 house?

20 A Never. Never.

21 Q What's the price of an ALTA survey?

22 A They vary. They typically start at

1 about \$6,000 and go up to \$20,000.

2 Q So you could have very well paid 25,
3 30 percent of the cost of the property for an ALTA
4 survey?

5 MS. JAMES: Objection.

6 A I don't know what you paid for the
7 property.

8 Q Okay. I understand.

9 Is there anything else that comes to
10 mind about this lawsuit that you might have
11 discussed with another party?

12 MS. JAMES: Objection.

13 Q Mr. Frederick, have you ever discussed
14 this lawsuit with anybody else?

15 MS. JAMES: Objection.

16 Mr. Frederick, you can answer, but you
17 cannot -- your answer should not include any of
18 our conversations or any conversations you've had
19 with any other attorneys of yours.

20 A So I did not talk to anybody else about
21 this lawsuit. I think what you're asking is: Did
22 I talk to Mr. Estes about this lawsuit, and I did

1 not.

2 Q How about Mr. Barry Levi, did you talk
3 to Mr. Barry Levi about this lawsuit ever?

4 A I have not. I haven't talked to Barry
5 since we did that water line.

6 Q Okay. How about Mark Bradsaw at the
7 Washington County water quality?

8 A No. Mark wouldn't have any -- any role
9 in this -- this lawsuit.

10 Q I didn't think -- know if he would have
11 any role. I was just asking if you discussed it
12 with him.

13 A I didn't even know there was going to be
14 a lawsuit. So the answer is no.

15 Q Okay.

16 A I don't know what the intent of that
17 question even is.

18 Q I understand. I appreciate your answer,
19 Mr. Frederick. I'll move on.

20 Host, would you please bring up an
21 e-mail labeled "FSA Communications." We'll make
22 this Exhibit 9.

1 (Exhibit 9 was marked for
2 identification.)

3 Q Fred -- I'm sorry. Mr. Frederick, this
4 is a -- this is an e-mail that you wrote to me on
5 March 19th, 2020.

6 Do you remember this e-mail?

7 A I do not. But I'll read it. If it came
8 from me, I obviously wrote it.

9 Q Yeah. Yeah. Would you please just take
10 the -- tell the host how to move the screen and if
11 you're satisfied, feel free to let me know,
12 please.

13 A Go slow. Let me read there.

14 Q Okay, I've read it. Is that the end of
15 it at the bottom where it says, "Truth"?

16 A Yes, sir.

17 Q Okay. All right. So I'm going to start
18 at the top. And we said deed overlaps do occur.

19 How often do they occur?

20 A There is no number. There is not some
21 scientific that every fifth one -- they occur, but
22 I don't know how often they occur. There is no

1 scientific number to say every fifth one is going
2 to be wrong. There -- there is nothing, but they
3 do happen.

4 Q And you corrected this deed overlap?

5 A Remember, in 1990, I did the survey for
6 Remsberg/Jolis.

7 Q Okay.

8 A That boundary, in my mind, has never
9 changed. I based it on that deed, their deed, and
10 adjoining deeds. Clearly, they called for going
11 to the west side of the creek.

12 Q Okay. So you said you corrected the
13 deed overlap, could -- if you could just -- I
14 apologize. I'm an automotive mechanic, and I
15 don't know a lot about surveying, and I'm not
16 trying to get your opinion. I'm trying to talk to
17 you about this e-mail, and how we corrected the
18 deed overlap in this particular case.

19 A So in this case, in 1990, I did the
20 survey for the Remsberg/Jolises, I found
21 monumentation, I found possession. I knew their
22 deed called for the west side and I held the

1 evidence that I found in correcting their
2 boundary, because their deed also grossly
3 misclosed, but it had calls. Calls going across
4 the creek, to the west bank of the creek, being on
5 the west bank of the creek, etc.

6 So I knew that it went to the west bank.
7 I finalized that survey, and then in 2018, you
8 bought this property. Your title company asked me
9 to do a boundary survey, because it also had an
10 old property description that had a forced
11 closure.

12 What do I mean by, "forced closure," it
13 gives bearings and distances to a -- to a point
14 and then it says, "Thence, along the railroad
15 tracks from the point of beginning." So I can't
16 prove the error of closure, that's called a forced
17 closure. And so knowing I had done surveys along
18 the other side and looking at your deed where it
19 says it starts on the west bank of the creek, it
20 matched very well with what I'd done nearly 30
21 years ago, and so I held that.

22 And you -- you will recall that as I

1 held that deed, there was another point further
2 down the creek that said that it went to a point
3 at the bottom of a rock cliff. And when I showed
4 you where that rock cliff was, and you agreed, I
5 said you don't go to the stream in this area.
6 Now, this is not along Remsberg/Jolis. This is
7 along Brian Smith. And that's when you said,
8 Well, I really want to own to the stream. And so
9 you approached Mr. Smith and I did that
10 description so you could buy the additional land
11 between the bottom of the rock cliff and -- and
12 all that property that was, you know, not in the
13 creek. You bought it from Mr. Smith so you could
14 go to the creek.

15 Q Okay. And I'm going to go back to, you
16 talked about closure. And I'm -- that -- that
17 seems to be important, because we talked about it
18 in the February 13th letter as well, as far as
19 precision of the measurements.

20 Is that what we're discussing, the --
21 how -- when you say "closure error," could you
22 explain that a little bit?

1 A Certainly. So remember back in the
2 1800s and early 1900s, surveyors used a compass or
3 a transit maybe in later years and they used a
4 chain. The old chains were lengths. They weren't
5 even, you know, in tenths and hundreds of a foot.
6 They were in lengths. They were 66 feet long.
7 One perch is 16.5 feet, so a lot of these old
8 deeds are in perches, telling me and most
9 surveyors that it was probably last surveyed in
10 the 1800s.

11 The technology has come a long way. So
12 in the olden days, they would use a compass like
13 a -- like a Boy Scout may use and they would --
14 and that was a much bigger compass on a Jacob
15 staff and they would try to sight like you would
16 sight a gun and then read the compass for a
17 bearing and then measure along with the slope of
18 the land to get a distance.

19 We didn't have computers back in the
20 1800s or the early 1900s. In fact, not until the
21 1990s when they became readily available, but it
22 was sometime in the 1880s that surveyors were no

1 longer using, just, you know, trigonometry to
2 create northings and eastings to get coordinates
3 so everything was done by -- by math. And it was
4 along -- it was a long tabulation, you know, to
5 get coordinates.

6 So they didn't shoot a million points.
7 Like today when I say a million, I exaggerate, but
8 today we'll easily shoot, you know, maybe 500 or a
9 thousand points, and it doesn't -- it's no
10 problem. We put it all in the computer.

11 We can evaluate so much more data very
12 quickly than you could back in that day. So back
13 to a compass and chains, you know, they would
14 measure it. They would have a bearing and
15 distance, and a bearing and distance, but it
16 wouldn't close.

17 Basically I mean by that, if you start
18 if you're going to draw a square and you start at
19 the northwest corner or the top left and you go
20 due south and then you go due east, and then you
21 go due west, and if it's all 1 inch, 1 inch, 1
22 inch and then the last line is only a half inch,

1 it didn't quite meet the beginning.

2 That's what I mean by, "It does not
3 close." Does that make sense to you?

4 Q So the -- so if you were doing a closure
5 ratio, it would be one-half inch to three and a
6 half inches, would that be a closure ratio?

7 A No. You don't -- you don't figure it
8 out in that kind of a ratio, but, I can see why
9 the average would think, yes, it's something like
10 that.

11 Q Is there a tolerance per closure ratio
12 in modern day surveying that you use?

13 A Yes. In modern day surveying, there is.
14 You know --

15 Q Okay.

16 A In fact, National Geodetic Surveys
17 has -- they have three different levels. You
18 know, they have first order, second order, and
19 third order. Even third order is really good
20 closure. First order, you know, is like, I think
21 it's one in -- and I'm not looking at the -- the
22 standards -- but it's like one in 100,000. You

1 know, so that would be 1 foot in 100,000 feet, and
2 then I forget the next closure, maybe 1 in 50, and
3 the third, one may be something like one in -- one
4 in 5,000. Again, that's -- it's still high order,
5 even third-degree accuracy is -- is still pretty
6 good accuracy. Much better than, you know, going
7 around this property, either yours or Jolises, and
8 it's misclosing either by forced closure, so you
9 don't know the closure, or Jolis, I think
10 misclosed by 165 feet.

11 So we know that I can't just take that
12 description and retrace it and assume it to be
13 perfect. There's got -- there's errors throughout
14 it. You can't prove where the error is, so now
15 you've got to really look for monumentation, the
16 calls. That is what the court says you look for
17 first anyhow. What does the deed call for? And
18 in this case for Remsberg Jolis, it called for, in
19 your area, crossing the creek along the west bank,
20 and in your case, it started on the west bank,
21 then it said with the creek, with the stream -- or
22 with the creek, and then it went to a stone, which

1 by looking at it, it to be on the west side, which
2 it should have been based on the adjoiner's deed
3 on the other side.

4 Does that make sense to you?

5 Q That -- that does, but I'm still
6 confused on the -- on the closure. It sounds like
7 there's two different types of -- of closures
8 we're talking about, and one you say is a forced
9 closure. Is that in the metes and bounds
10 description?

11 A Yes. And here's what I mean by "forced
12 closure." Let's go back to that square. So if
13 you start at the top left and then go down one
14 inch, you could try and draw that, and then if you
15 go to the right at 90 degrees due east, you could
16 draw that. And then if you go north or straight
17 up the page one inch, you could draw that. And if
18 I said thence to the point of beginning, I didn't
19 give you due west or one inch, that's a forced
20 closure. You made it closed because you went
21 right back to where you started from.

22 Does that make sense to you?

1 Q Yes. So that metes and bounds
2 description closes because you forced it to.

3 You said go back to the beginning.

4 A Right. So you said the words, though,
5 "you forced it" to close. And that's what your
6 description does. It doesn't have that last line
7 that says thence along the railroad tracks to the
8 point of beginning. It gives you no bearing or no
9 distance. So what's -- what you don't know is,
10 well, how good is this survey? Does it close
11 perfectly? Was it done more reasonably in time?
12 And we know it wasn't because yours was in perches
13 also. So we know yours is an old description.

14 (Simultaneous cross-talking.)

15 A Go ahead.

16 Q So -- so when you say, "The goodness of
17 the survey," and you're talking about how precise
18 that survey is, how -- how well -- is measured,
19 all the details and precision; correct?

20 A Yes.

21 Q Okay. And are the modern GPS
22 instruments even more accurate than what would

1 have been used in the '90s and -- and this survey
2 of -- for Remsburg?

3 MS. JAMES: Objection.

4 A I can answer that. The answer is yes.
5 Modern GPS with high quality surveying GPS,
6 there's different GPS. There's the GPS in your
7 phone that is not high quality, there's other
8 levels of GPS, and then there's survey quality
9 GPS. That's what we use.

10 Q And when you use GPS, you vary a certain
11 amount of degrees from magnetic north; is that
12 accurate?

13 A Let me define that to you, because I
14 think the -- the bearings -- the bearings
15 themselves between you, your survey that I did for
16 you with GPS, and the survey I did for Remsburg
17 when I didn't have GPS, they're different. Why
18 are they different?

19 They're intended to be the same line,
20 but in the -- you know, in the '90s, we didn't
21 have GPS. So it wasn't based on true north. It
22 was based on a magnetic north or a rotated north

1 to an adjoining, you know, plat, it was, you know,
2 we assumed something.

3 Today, if we're using GPS, it
4 automatically puts it in the Maryland State Plane
5 Coordinate System and so we use those bearings.
6 They can be -- they're intended to be the same
7 lines, but you use a different bearing datum,
8 because you're bringing it up to today's standard
9 and today's technology. So if you look at the
10 bearing of you and the bearing of Ben, although
11 you'll see the distances are exactly the same, the
12 bearings are different. That's because it -- one,
13 we used an assumed bearing on Estes, which goes --
14 dates all the way back to Remsberg, 1990, and in
15 yours, we used GPS.

16 Q Okay. I appreciate that explanation.
17 Thank you, sir. So the bearings and -- and the
18 difference in instrumentation didn't have anything
19 to do with fixing the deed overlap; is that
20 correct?

21 A They did not.

22 Q And did making the deed close; is that

1 what fixed the deed overlap?

2 A Well, by doing a new survey and
3 correcting all of the lines to match what your
4 adjoiner has corrected the -- your description.
5 And, of course, the railroad was since surveyed.
6 Remember Remsberg was first surveyed by us in '90.
7 And that's what we used going forward. The
8 railroad was surveyed by others in '93. And then
9 your survey that I did for you was in 2018.

10 Q And -- and when you did Plat 4040 and
11 Plat 10955, did you bind on that right-of-way?

12 A On the railroad right-of-way. Let me
13 see 4040. I don't think I did. Because Plat
14 4040, I think, was before I had any information on
15 that railroad, so, obviously, I didn't, because
16 the railroad, I show the railroad right-of-way and
17 we found a corner fence post on the right side and
18 we set that pin on the left, and we used the best
19 evidence available at that time that we thought
20 was correct.

21 I don't even believe the railroad tracks
22 were there in 1990 or '93. But we tried to get a

1 long bearing of what we thought was the center
2 line of it, which is hard to do when the tracks
3 are going, and then we offset it to get that line
4 and we had a corner fence post.

5 Today, I know that that line doesn't
6 match DNR's line, so in that case the Estes line
7 there is -- is not correct. He actually lost some
8 land, I believe, because the railroad survey for
9 DNR supersedes what I did. So his distance of
10 280, along you is now less. That's the upper
11 line. Up. Keep going up. Yes. Yes. Right
12 there. 280.50 and on Mr. Holder's, I think it's
13 something less than that, because, of course,
14 in -- in '93, the railroad survey was done and we
15 adjusted everything then to the railroad survey.
16 For you --

17 Q So -- and so then going by what -- you
18 adjusted that 17 perch line to 280.5 feet, down to
19 about 268 feet. So it would have been about 12
20 foot; is that -- pull up 10955, host.

21 Let's see. Is that -- is that line now
22 269.5?

1 A Correct.

2 Q And -- and it was 280, so is that 11
3 foot; is my math right there?

4 A Correct.

5 Q So the State of Maryland came in -- I'm
6 sorry. What was that, sir?

7 A Correct. About 11 feet.

8 Q So the DNR came in and took 11 foot from
9 the Hudsells and Mr. Estes in -- you've said what
10 year was it that they took the land?

11 A In 1993, but I'm not saying they took
12 the land. They had a very long boundary survey
13 done. When we did it for Estes -- actually,
14 Remsberg. When we did it for Remsberg in '90, we
15 just had a short snippet to try to tie along that
16 railroad. They had their surveyor survey miles of
17 railroad to get it much more accurate than I was
18 able to do. So I'm not saying that they took
19 something from anybody. There's valuation maps
20 that the railroad keeps. They're very meticulous
21 in their -- their right-of-way maps, and whoever
22 surveyed that, I'm certain used those valuation

1 maps and they didn't take additional, that they
2 just more accurately defined it.

3 Q How was it more -- I'm sorry, but the
4 accuracy's the monumentation; is that correct?

5 A The accuracy is monumentation, but if
6 they were able to find, remember they're
7 surveying -- I don't remember how many miles
8 they've surveyed. But if they're able to survey
9 miles of it, and they have a center line with
10 offsets to what they bought, you know, back in the
11 1800s with their right-of-way, and if they're able
12 to survey bridge abutments over a mile and -- and
13 then fit that in so it's perfect, then their
14 offsets, once they get the center line perfect,
15 their offsets should be perfect with their records
16 for the right-of-way. So their records should be
17 the most accurate thing because they -- they're
18 going for a long distance.

19 In essence, the longer the baseline, the
20 more accurate the survey should be.

21 Q Okay. That makes sense. Thank you.
22 Thank you, Mr. Frederick.

1 So going back to the -- to the FSA
2 Communications, Exhibit 9, if the host could, and
3 I apologize for sort of getting off center, but we
4 corrected a deed overlap and the newer instruments
5 didn't correct it. The -- the closing -- I'm --
6 I'm still trying to find the difference of how
7 getting that deed to close would have corrected
8 that deed overlap as you could find it against --
9 against that fence in the creek, basically.

10 MS. JAMES: Objection. What was the
11 question? Was there a question in there?

12 Q I'm trying to figure out what exactly he
13 did to correct the deed overlap. Like, all the
14 things that would have corrected a deed overlap
15 that was done with Plat 100955?

16 MS. JAMES: I still don't know if I
17 understand the question.

18 Mr. Frederick, do you understand the
19 question?

20 A I -- I don't think he's wording it very
21 clearly, but I can explain what I did to determine
22 the -- the Remsberg-Jolis line.

1 Q Okay.

2 A And back then, I did not perceive there
3 to be a -- a deed overlap. They were just poorly
4 written deeds. They were old deeds, not as
5 accurate as deeds are today, when they're -- they
6 have recent surveys. So I'm not trying to infer
7 that there was a deed overlap back in the, you
8 know, the 1990s when we first did this. But what
9 we did is we used the deeds, especially the
10 Remsberg historical deed that called for crossing
11 the Antietam Creek to a stone on the west bank
12 that's along the west bank. You know, there's
13 several calls in there along the west bank and
14 then there's another piece, Parcel No. 2 that goes
15 to the stone at the -- on the west bank at the
16 abutment on the west bank of the creek. So
17 there's substantial calls in that deed that call
18 for the west side of the creek.

19 So, again, Mr. Holder, I'm not saying
20 that there was an overlap there. I resolved that
21 by following the intent of the deed to the best of
22 my ability and monumentation found to resolve that

1 property line for the Remsberg-Jolis property.
2 And then it just carried forward because the deeds
3 don't change after that, because I put a new
4 description on record.

5 In your case, when I got to yours in
6 2018, your deed also said -- I believe it started,
7 I'm not sure where it was in here, but there's a
8 call in there that it's at a stone on the west
9 bank near the abutment, on the west side of the
10 Antietam Creek. You know, so it matches with the
11 Remsberg description. Both of them are calling
12 for the same thing. And we know by that call that
13 it's on the west side.

14 Then on yours, it says thence down the
15 creek and it only says that one time and then it
16 has a couple of lines, but it doesn't say
17 continuing down the creek -- continuing down the
18 creek, it doesn't even say continuing down the
19 center of the creek. So to me, the line is
20 already established by a description, the
21 adjoiner's description, the old description, where
22 several times it said, "The west bank," you

1 know...

2 Q Okay.

3 A And it does -- it does eventually go
4 into the creek and then clearly both your deed,
5 your old deed, and the Remsberg deed call for it
6 going up on that spit of land, that little, where
7 the yellow highlighted area -- I'm going to call
8 that the most contested part of the land.

9 Q Okay.

10 A And -- and your deed says, "To a stone."
11 And by the direction of your deed's bearing, it
12 had to go on the west side, not in the creek, not
13 on the east side. So all evidence of the old
14 deeds tell me it's on the west side.

15 So I write it based on what the deeds
16 are telling me and -- and believe it to be true.

17 Q I think I understand now. So if a deed
18 was going to follow a creek, it would say
19 something like, The following nine calls around
20 the creek or something to that --

21 A Yes. Yes.

22 Q Okay. I understand. It's fine. I

1 appreciate it. Okay. So then you go on to say,
2 "You want all -- own all the land on your side of
3 the street. I get that, but the very small part,
4 your neighbor owns."

5 Did you think that it would not be
6 useful to -- to take court action to possess that
7 very small part? What were you alluding to with
8 capitalizing "very small"?

9 A In that it is a very small -- I think
10 you said or somebody said that it's only about
11 10,000 square feet of land, and it's very small.
12 That's a quarter of an acre. But --

13 Q Okay.

14 A But it's very small, but it's owned by
15 somebody else. It's -- it's in their deed, and
16 there's actually -- and I think I showed you when
17 I was with you, you know, the old physical
18 evidence there.

19 Q So when you say --

20 A The fence and the tree, and the fence
21 post.

22 Q Right. Yeah. We did -- we went over

1 those in April, and I appreciated your time in the
2 field. Is -- is a grantor able to grant land
3 that's not within his title chain?

4 MS. JAMES: Objection.

5 Q Mr. Frederick, if I gave you a quitclaim
6 for The White House, would you own The White
7 House?

8 MR. NEAL: Objection.

9 MS. JAMES: Objection.

10 A No.

11 Q Okay. Thank you.

12 Mr. Frederick, I'd like to take a
13 eight-minute break, if everybody could come back
14 at 10:30, please. Is that okay with everybody?

15 MR. NEAL: Fine.

16 THE WITNESS: Yeah.

17 (Off the record.)

18 BY MR. HOLDER:

19 Q Okay. We're back on the record.

20 Mr. Frederick, are you aware that Mr. Estes has
21 pressed criminal trespass charges against me?

22 MS. JAMES: Objection. Hearsay.

1 MR. HOLDER: It's a yes-or-no question,
2 Mrs. James.

3 MS. JAMES: It's not relevant, but if he
4 knows the answer.

5 THE WITNESS: Did you say to answer?

6 MS. JAMES: You can answer if you know
7 the answer.

8 A I know only the answer because my -- my
9 attorney, Ms. James --

10 MS. JAMES: And I'm going to caution you
11 on the conversation --

12 THE WITNESS: Okay.

13 MS. JAMES: -- you had with me and your
14 other attorney.

15 A Okay. I am aware of it, but only
16 recently.

17 Q Okay. And Mr. Estes did not consult
18 with you prior to pressing those charges?

19 A Not at all. I'm not an -- I'm not an
20 attorney. All I did was I did boundary survey
21 work.

22 Q Did Mr. Estes speak with you prior to

1 filing the lawsuit for \$250,000 worth of trees he
2 alleges I destroyed?

3 A I know nothing about that at all.

4 Q When you were out there in 2018, did you
5 see \$250,000 worth of trees?

6 MS. JAMES: Objection.

7 MR. NEAL: Objection.

8 MR. HOLDER: He's a very well-educated
9 man.

10 MS. JAMES: He's -- he's not an
11 appraiser of trees.

12 MR. NEAL: Or an arborist. I mean, if
13 you want an expert opinion you'll have to hire an
14 expert, not a -- not a surveyor.

15 MR. HOLDER: He's a fact witness.

16 Q Did you see any trees larger than eight
17 inches around when we were there in 2018?

18 MS. JAMES: Objection. But you can
19 answer if you know the answer.

20 A I didn't really count the trees. I -- I
21 truly have no opinion on how many trees, the size,
22 or the values of the trees. I knew nothing about

1 that, Mr. Holder. I -- were there trees there,
2 yes, and how many, size, value, I have no idea.

3 Q How about if we looked at Plat 9186,
4 would that tell us?

5 A I don't think I show a bunch -- I don't
6 show any trees on there; do I?

7 Q Host, can we take a look at Plat 8961,
8 please?

9 MR. NEAL: This is Exhibit 10?

10 MR. HOLDER: Exhibit 10, yes. Second
11 page.

12 (Exhibit 10 was marked for
13 identification.)

14 Q Could you please zoom in around the deed
15 overlap area? (Pause.) Correct.

16 Are any of those trees in the deed
17 overlap area that are illustrated on Plat 8196,
18 Mr. Frederick?

19 MS. JAMES: Objection.

20 A It appears --

21 MS. JAMES: Have we established that
22 there are trees on -- on this depiction?

1 Q Mr. Frederick, are those round things
2 that look like trees depicted trees?

3 A Yes. And I think there's a legend that
4 shows that they are trees, and if they're depicted
5 like that, they may be specimen trees. So if you
6 would zoom in right there. It's called a specimen
7 tree.

8 Q Could you explain a little bit of that
9 for us?

10 A I'm going to be very honest, I am not
11 the forester. I don't think I signed that plan,
12 our firm did it, but that is not my area of
13 expertise.

14 Q Okay.

15 A So if you would zoom in there, who
16 signed that for my firm on the bottom left-hand
17 corner, that was done by a Richard Rice, who is no
18 longer -- no longer with us, but it's not what I
19 do. I am not an expert on trees. That was done
20 by -- by one of our employees, who was, you know,
21 trained in forest ordinance stuff and he did that.

22 Q Okay. I'm going to ask to bring up some

1 pictures of the area in the discovery, and it's
2 going to be the third set of discovery that
3 Mr. Neal sent. It's going the high 400s, and
4 we'll make this Exhibit 12.

5 MR. NEAL: Exhibit 11.

6 MR. HOLDER: Oh, this is 11?

7 MR. NEAL: That's what I have in my
8 numbering. Exhibit 11.

9 Q Well, I thought 9186, and then we went
10 to the second page of the trees.

11 MR. NEAL: If it's all part of 9186, if
12 you want to make that one. I don't care. As long
13 as you're --

14 MR. HOLDER: You're very well organized,
15 Mr. Neal, and I appreciate your advice.

16 (Exhibit 11 was marked for
17 identification.)

18 BY MR. HOLDER:

19 Q Host, could you start to slowly scroll
20 through the pictures, and, Mr. Frederick, if at
21 any time you start to sort to see or start to
22 become aware of where these pictures are, just --

1 just have us stop?

2 A I think I know where that one is --
3 that's sycamore.

4 Q Okay.

5 A I can't quite tell where that is. It's
6 pretty hard to tell. Right. Back up.

7 Q Back up. Yeah. Are we looking south?

8 A I think we are. I think that's near the
9 intersection of a little feeder stream coming
10 through Mr. Estes' ground, looking across the
11 stream, that would be your -- that would be the
12 spit of ground that you're arguing over on the far
13 side of the stream from the -- from where this
14 picture's taken, and we're looking south, down the
15 stream.

16 Q Okay. And you said, "A little feeder
17 stream." If I called that stream a Big Spring
18 Branch, would -- would you know what I'm
19 referencing?

20 A It wouldn't mean anything to me. I
21 don't know what its -- I don't know what its name
22 is.

1 Q Okay.

2 A I don't think I called it -- I don't
3 think I labeled it on my old -- on my old survey.
4 Yeah. That doesn't -- that doesn't mean anything
5 to me.

6 Q Do you know where the Keedysville spring
7 is located that they procure their water from?

8 A Roughly, yes. It's off of Mount Hebron
9 Road back in there somewhere.

10 Q Okay. Would you think it likely that
11 that spring runs into that stream?

12 A It -- I don't know. It -- it probably
13 does, I guess. I don't know why it's relevant.
14 But that's where, I think at the intersection of
15 that stream, we're looking south and -- and what
16 you're claiming is that, you know, that yellow
17 shaded area is on the far side.

18 Am I correct?

19 Q That -- that's my belief as well,
20 Mr. Frederick?

21 A Okay.

22 Q Could you keep scrolling through the

1 photos, Mr. Greivell? We're looking for a photo
2 of the old fence rail. I'd like to show
3 Mr. Frederick.

4 Okay. Perhaps we can check the other
5 discovery file. There's -- there's going to be a
6 lot of brush piled up in these photos, dead trees,
7 deadwood, possibly some old fencing, some old
8 fence posts. Here we go.

9 What I'm looking for, Mr. Frederick,
10 is -- you can see a depression in the ground. And
11 you talked about that in the Nowak (ph) web case.

12 Do you remember that case?

13 A I remember the names. I don't remember
14 much about it anymore.

15 Q Okay. I was -- I was reading that case
16 and I had saw you -- you had testified that there
17 wasn't a depression in the ground where the old
18 fence would be, and that typically that might be
19 something you would see and look for as evidence
20 on the ground.

21 Does that ring a bell?

22 MS. JAMES: Objection. You can answer.

1 A It -- it makes sense to me. I don't
2 remember the statement but it makes sense that you
3 can see where fences sometimes were.

4 Q That's what I'm trying to find.
5 Mr. Neal, I thought, sent a good picture of it.
6 And he also -- he sent a picture of -- of
7 Mr. Estes with a flagged stake in the middle of
8 the creek.

9 Do you ever remember setting a survey
10 marker in the center of the creek?

11 A I don't know, but I am not -- I am not
12 in the field, so I don't do the actual field work.
13 I'll go back --

14 Q Okay.

15 A -- through things. Is that the pin? I
16 see a pin over there, on that -- that pin --

17 (Reporter clarification.)

18 Q Host, zoom -- zoom back in on that flag
19 again, please.

20 Is that the -- is that pin now on lands
21 claimed by the DNR? Is that the one that was in
22 the corner we talked about?

1 A I don't believe so. I don't know where
2 that pin is. So I can't tell from that picture.

3 Q Okay. Keep going, host, and I believe
4 there is one in the center of the creek here.

5 A If any of these, what about that one
6 right there? Where is he at?

7 Q Objection. You can answer if you know
8 what this picture -- where this picture is
9 located?

10 A I honestly can't tell. I don't know. I
11 was not in the field when the surveyors, my field
12 survey crews went down to reflag it. So I don't
13 know where that is.

14 Q It's possible they set a pin in the
15 center of the creek?

16 A It is possible that Mr. -- Mr. Estes
17 asked my crew to do that. We normally do not do
18 that. But it's not -- it's not wrong. It's just
19 it won't last because of a -- you know, floods
20 washing the stone away, etc., you won't be able to
21 find it.

22 Q Okay. That makes sense.

1 So when you came out in 1990, did you
2 find any of the old stones?

3 A I don't believe so. We found the blazed
4 tree and the -- the fence post and the fence line,
5 but I don't believe we found any stones.

6 Q So all the monumentation that you
7 utilized on land was all found in 1990?

8 A Well, the blazed tree was, the fence
9 post, the fence line, and the stone abutment on
10 the west side, up along the railroad tracks.

11 Q That wasn't -- the stone above it was
12 not called for in the previous deed?

13 A The stone abutment was mentioned so we
14 know -- we know that it's on the west side and
15 near there, but we didn't find, to the best of my
16 knowledge, I don't believe we found the planted
17 stone near the stone abutment.

18 Q I got you. You got close, but not
19 bulls-eye. Okay.

20 Mr. Frederick, that's all the questions
21 I have for you to now. I would like to turn the
22 deposition over to Mr. Ruble.

1 MR. RUBLE: Thank you.

2 EXAMINATION

3 BY MR. RUBLE:

4 Q Good morning, Mr. Frederick.

5 A Good morning, Mr. Ruble.

6 Q You've been identified by Mr. Estes as
7 an expert witness in the case.

8 Are you aware of that?

9 MS. JAMES: And let me just jump in
10 here. He was originally going to be identified as
11 an expert witness. He is later now identified as
12 a fact witness, and he's only a fact witness in
13 this -- in this case.

14 MR. RUBLE: Host, can you allow me to
15 share my screen?

16 HOST: I think I've clicked the setting
17 back. I don't -- I don't know why it's not
18 allowing -- let me see. Yeah, I've got it --

19 MR. RUBLE: It may be something that I'm
20 doing. So give me a minute.

21 You all see the expert disclosure I'm
22 trying to share? (Pause.) Anybody see it?

1 MS. JAMES: Yeah. You can see the front
2 caption.

3 A Plaintiff's First Expert Witness
4 Disclosure.

5 Q Oh, good. It came up. Okay. Good. So
6 this was filed by Mr. Estes' attorneys on
7 April 9th. What's today? Twenty-sixth? A couple
8 weeks ago. I haven't seen any withdrawal of this
9 and I certainly prepared today based on the e-mail
10 from you, Ms. James, and based on the filing of
11 the case that the plaintiff intended to call
12 Mr. Frederick as an expert. I have some questions
13 about this, and I intend to ask them.

14 MR. NEAL: Can I clarify really quick?

15 MR. RUBLE: Go ahead.

16 MR. NEAL: I cited to the rule for the
17 non-retained experts. Mr. Frederick may be called
18 to testify to previously provided opinions, but
19 he's not being asked to form new opinions. He's
20 not being asked to prepare a report. He is a
21 non-retained expert.

22 MS. JAMES: Also, Mr. Ruble and not to

1 cut you off, Mr. Neal, but if you're going off my
2 e-mails, I also e-mailed you that he's testifying
3 as a fact witness and not an expert witness at
4 this deposition.

5 MR. RUBLE: Oh, I don't know that you
6 control that, Mr. James. I have a witness here --
7 I mean, if you want me to reschedule his
8 deposition as the expert witness for another date.
9 We can do that, but there are costs involved in me
10 preparing my several questions about this. I'd
11 like to proceed, I'm sure Mr. Frederick is
12 available to proceed so...

13 MS. JAMES: So are you retaining him as
14 an expert? I don't understand.

15 MR. RUBLE: I'm sorry you don't
16 understand. Mr. Neal just explained that he is
17 identifying on behalf of the plaintiff, this
18 witness, as a non-retained trial expert.

19 MS. JAMES: You can proceed. But I will
20 be objecting if you're crossing the line. Go
21 ahead.

22 MR. RUBLE: Which line, ma'am?

1 MS. JAMES: If you're -- if you're
2 crossing the line and asking him questions that go
3 a bit beyond what his -- his knowledge was for
4 this deposition today.

5 MR. RUBLE: Well, I mean, maybe you take
6 it one question at a time.

7 MS. JAMES: Go ahead.

8 BY MR. RUBLE:

9 Q The plaintiff -- sorry, Mr. Frederick,
10 for that delay. The plaintiff has said that
11 you're expected to testify regarding the location
12 of the boundary lines of the plaintiff's property,
13 including the location of the shared boundary
14 between the plaintiff's property and the property
15 of Deena Holder; do you see that?

16 A I don't see that on what you're showing
17 me there. I'm only seeing the bottom part of it.

18 MR. NEAL: You have to scroll up.

19 A It says -- you've got to scroll up, I
20 guess. I have not seen this document that you're
21 sharing.

22 MS. JAMES: I have also not seen this

1 document, so if you could send it to us, that
2 would be great.

3 Q So let me ask you this, Mr. Frederick,
4 and host -- I'm still trying to get my Zoom here.

5 HOST: Matt, what are you trying to
6 share?

7 MR. RUBLE: I wanted to first share, and
8 I think I did, the expert disclosure, and now I'm
9 just trying to get back to my Zoom screen, which I
10 think I finally did here.

11 HOST: There you go.

12 Q And ask -- can I ask you to share 1095.
13 I think it might be Exhibit 1 in this deposition,
14 Plat 10955. Okay.

15 Is everybody seeing Plat 10955?

16 A I see it.

17 Q Okay. I see it. Mr. Frederick, you
18 talked with Mr. Holder this morning about the
19 overlap or disputed area. It was called both. Am
20 I correct that if Mr. Estes has a boundary dispute
21 with the neighboring owner over this disputed
22 area, that the neighboring owner is the owner of

1 reconfigured Parcel 414 on your plat?

2 A Can you ask that again?

3 Q Certainly.

4 A Please.

5 Q Looking at your plat, let me take it,
6 sort of, a step at a time. This is where you
7 reconfigured 414 and 127; correct?

8 A Correct.

9 Q You made 414 the larger, or I think you
10 referred to it as the remainder for the larger
11 parcel, which ends up almost four acres of land
12 and 127 was reduced in size to include only the
13 house known as 28 Antietam Drive; is that right?

14 A Correct.

15 Q Now, there's also 25 Antietam Drive
16 toward the top of your plat which is shown as
17 owned by Deena Holder; is that right?

18 A Correct.

19 Q Now, if Mr. Estes has a legal dispute
20 over the ownership of what you've referred to as
21 the disputed area, down near the flat area near
22 the creek where we've been talking about all day,

1 am I correct that his dispute is with the owner of
2 reconfigured Parcel 414?

3 A Yes.

4 MS. JAMES: Objection. But you can
5 answer, if you know the question -- if you know
6 the answer, but you are not a legal expert.
7 You're not an attorney.

8 A Yeah. I am not a legal expert. I don't
9 know who's -- you know, who he's fighting.
10 According to Mr. Holder, those two seem to be not
11 on friendly terms, but I don't understand that
12 relationship, quite frankly, between, you know,
13 the -- the ownership of the land and the
14 management of it, but my simple understanding is,
15 Mr. Holder, Mr. Estes, are disputing this land,
16 and I don't call it an overlap. I've always shown
17 it as everything on the west side of 203.44 feet
18 as being Mr. Estes and everything on the east side
19 being Uncle Eddies and/or Deena Holder, or whoever
20 controls Uncle Eddies, LLC.

21 Q Thank you, sir, for that answer. But
22 let me ask you, I'm not asking you to tell me who

1 owns the land across from Mr. Estes. But you did
2 the boundary survey for both Mr. Estes and for
3 this plat, No. 10955, that we're looking at.
4 That's all your work; right?

5 A That's all my work.

6 Q So am I correct that in the area of
7 dispute, whether you call it an overlap or
8 dispute, it's down here near the creek, L13 and
9 L12 on your plat.

10 Is that the area we're talking about,
11 sir?

12 A And the 203.44.

13 Q Okay. So that's what's on the screen
14 now?

15 A Yes.

16 Q It's L -- L13 and L12; correct, sir?

17 A L12, L13 and the 203.44 feet to where it
18 goes back in the creek. That -- that is my
19 understanding of what they are -- what they are
20 arguing over.

21 Q Right, because that's on the opposite
22 side of the majority of Mr. Estes' land. It's on

1 the opposite side of the creek. It's that sliver
2 that they're fighting about, there?

3 A Yes. It's my understanding.

4 Q And so the -- the lands on the northwest
5 side of your boundary line are the lands of
6 reconfigured Parcel 414; is that right?

7 A Correct.

8 Q So whoever owns reconfigured Parcel 414
9 is the one who has the claim, if there is a claim,
10 to this overlap or disputed area; is that correct?

11 MR. NEAL: Objection.

12 MS. JAMES: Objection.

13 Q You may answer, sir.

14 A I would assume so. I can't see where it
15 would be anybody else other than Mr. Estes, who
16 has it in his title, or the person on the other
17 side, if they believe they have it, maybe by
18 adverse possession. But I can't give any --

19 Q Yeah. The person on the other side --
20 when you say, "Person on the other side," you mean
21 the owner of reconfigured Parcel 414; correct,
22 sir?

1 A Correct. Correct.

2 Q All right. Thank you.

3 Does -- if you give me a -- zoom back
4 out, a little bit, Mr. Host, on the 10955, if we
5 can go up to the area that is house number 25 --
6 25 Antietam Drive. "Existing," I think it says.
7 "Existing Dwelling, No. 25."

8 Do you see that, Mr. Frederick?

9 A Yes.

10 Q And that's now or formerly -- by Deena
11 Holder. Would I be accurate to say that that
12 parcel, that existing dwelling, 25 Antietam Drive,
13 does not touch any of this disputed area we're
14 talking about this morning in this -- in this
15 litigation; is that correct?

16 A The -- it does not.

17 Q And, similarly, if you go down a little
18 bit, you see existing dwelling number 28, 28
19 Antietam Drive, which is the reconfigured Parcel
20 127; do you see that?

21 A Yes.

22 Q And am I also correct that reconfigured

1 Parcel 127 doesn't come anywhere near touching
2 Mr. Estes or the disputed area; is that right?

3 A That's correct.

4 Q All right. If we could look at -- let
5 me ask you this, sir -- I don't need that screen
6 shared anymore. We can go back. Thank you.

7 Mr. Estes has alleged that my client,
8 Deena Holder, I guess, used Justin Holder as an
9 agent to trespass upon Mr. Estes' property. Are
10 you aware of any facts, sir, that would support
11 that?

12 A I am not. I don't know what they've
13 done down there.

14 Q All right. Mr. Estes has never spoken
15 to you about Deena Holder trespassing or using an
16 agent to trespass upon his land; is that right?

17 A He has not. The only thing he mentioned
18 to me is he and Mr. Holder got into some argument
19 and that's been some time ago.

20 Q Okay. And Mr. Estes is alleging that, I
21 guess, similarly, that -- that Deena Holder
22 somehow aided and abetted a cutting of trees and

1 brush that caused Mr. Estes' alleged damages.

2 Do you have any factual knowledge to
3 support that, sir?

4 A I do not.

5 Q Okay. And Mr. Estes has never spoken to
6 you about Deena Holder being responsible to him
7 for any brush or trees that were cut by another
8 person?

9 A He has not.

10 Q Okay.

11 A No one has.

12 Q Okay. Same question, Mr. Frederick,
13 where Mr. Estes alleges that Deena Holder somehow
14 used Justin Holder to create a nuisance on
15 Mr. Estes' property, do you have any support --
16 any factual knowledge of that?

17 MS. JAMES: Objection. You can answer.

18 A I do not.

19 Q Okay. And Mr. Estes has never spoken to
20 you about Deena Holder allegedly causing a
21 nuisance and causing him damages.

22 MS. JAMES: Same objection. You can

1 answer.

2 MR. RUBLE: Basis for the objection,
3 Counsel.

4 MS. JAMES: The basis is that he is a
5 land surveyor. He's not an attorney, so when you
6 use these legal terms with him, "nuisance," he's
7 not an attorney. He doesn't fully understand the
8 legal reasoning or the legal meaning of nuisance
9 and trespass. And if you want to go through that,
10 go ahead, but these are a legal questions. He's a
11 land surveyor.

12 So if we want to keep the questioning to
13 his land survey, or -- or in his capacity as a
14 land surveyor, that's fine.

15 MR. RUBLE: Just want to find out, since
16 you've been very clear that you think he's merely
17 a fact witness, whether he has any factual
18 knowledge to support the earnest of the complaint,
19 and I would say, with respect to Ms. James,
20 Mr. Frederick, if you don't understand the word
21 "trespass" or "nuisance" or any other word I ask
22 you in the question, please ask me to clarify, and

1 I'll try my best to do so.

2 So I don't know if you answered the last
3 question. I was just asking you whether Mr. Estes
4 had spoken at all about his allegation that Deena
5 Holder is responsible to him for some nuisance
6 upon his land?

7 A I'm not aware of that.

8 Q Have you spoken to Mr. Neal about the
9 case?

10 A I did not. We had a brief conversation
11 just weeks ago about maybe being an expert
12 witness. And that was it. We did not go into
13 details on the case.

14 Q Okay. So I'd be correct to say you have
15 no -- no conversation with Mr. Neal about trespass
16 or nuisance or cutting of trees, insofar as Deena
17 Holder is concerned?

18 A We have not had that conversation.

19 Q Can I see, Mr. Host, the Plat 9186
20 again? Can we go up to the first page of that
21 exhibit? And can you zoom in on the lower left
22 corner?

1 All right. When you were testifying --
2 oh, let's see. Zoom out just a little bit now. I
3 want to get that first line. Okay. That's good.

4 When you were testifying for -- in
5 response to questions by Mr. Holder, I believe you
6 testified that this line that starts at "an iron
7 pin" -- I can't see if it was set or found, but I
8 think it's found and goes 280 feet, 280.5 feet.
9 It looks like "L."

10 What line is that? Let's see. L5; is
11 that right? Or L --

12 A It's that line.

13 MR. NEAL: It's too short to fit on
14 the -- to fit on the line, so the L indicators
15 indicate short lines that you couldn't fit the
16 entire description on.

17 Q Got it. So that -- that 280 feet,
18 Mr. Frederick, if I understood your testimony to
19 be that a survey was done after this 9186, it was
20 done by the railroad evaluation survey; is that
21 right?

22 A Well, that survey for the railroad was

1 done in '93. I don't know the date of this. And
2 I wouldn't be surprised if my office -- can you
3 zoom in on that date?

4 Q It does --

5 A So the railroad was -- was already done.

6 Q Okay.

7 A And my office just reused the survey in
8 the file and didn't correct the railroad
9 right-of-way.

10 Q Okay. Because if I understood your
11 testimony correctly, then this 280-foot line has
12 been actually reduced by approximately 11 feet?

13 A That's correct.

14 Q As a result of the railroad; is that
15 right?

16 A That's correct.

17 Q So if -- if Mr. Estes were claiming
18 everything is his land in Plat 9186, he would
19 certainly have an issue with the Department of
20 Natural Resources as regards to about an 11-foot
21 strip of property that he's -- he's overlapping
22 into their land; is that right?

1 A At least at the far left corner on the
2 west side. I'm not sure what the overlap would be
3 on the east side, but there may be an overlap
4 there; I'm not saying it's 11 feet.

5 Q Understood. Understood. Okay. You
6 talked about -- I don't need that exhibit anymore.
7 Thank you, Mr. Greivell.

8 What do you understand the term
9 "riparian rights" to mean?

10 MS. JAMES: Objection. You can answer
11 if you know.

12 A Riparian rights to me? My understanding
13 would be how streams can change, but through
14 flooding or just over time, but I -- I don't know
15 how it would affect a boundary. It's my
16 understanding that for it to really change in
17 something like this, I think, in my opinion, the
18 boundaries would remain the same, along a large
19 river, you know, through a decreation (ph), if
20 a -- if large portion of a bank were washed away,
21 you could lose land to, you know, whether it be
22 the ocean or the bay or a river. That's my

1 understand.

2 But I will tell you I'm not the expert
3 on riparian -- riparian rights and how boundaries
4 may change due to that.

5 (Reporter clarification.)

6 Q Understanding that it's not your job as
7 a surveyor to determine whether a moving creek,
8 whether boundaries move with the creek or don't
9 move with the creek, I understood your testimony
10 to be that your job is to go out and find the
11 boundary line as it was intended in the deed
12 without regard to making the legal decision that
13 the court might make about whether the creek
14 moving has moved a boundary line; is that correct,
15 sir?

16 A That's correct. And on the -- I'll
17 further expand on that by saying in the deed for
18 Remsberg to Jolis, number one, it clearly said it
19 crossed the creek. In that area, which is in this
20 spit of land -- we'll call it the yellow land. In
21 the yellow land, we found a blazed tree. We found
22 fence, we found fence post. So we found evidence

1 that it crossed where the deed said it crossed,
2 and we found evidence where there was a fence
3 there and we believe that to be the intent of that
4 Remsberg-Jolis deed.

5 Q What title work did you have back in
6 1990 when you prepared the description for a
7 Remsberg-Jolis deed?

8 A I didn't; I just had the Remsberg, the
9 old Remsberg deed. All that I had when I started
10 that survey, the Remsberg deed. We did not do
11 in-depth title. You know, we will get the
12 adjoining properties, just the most recent, but we
13 don't trace title back.

14 Because a boundary survey in 1850 or
15 1890, whatever, pick a date. And then a better,
16 more recent survey is done, and it says, Being all
17 the same lands, but yet it has a different
18 description, would tell me or I believe any
19 surveyor that a more recent survey was done to
20 better define, more accurately define with perhaps
21 better equipment, etc., the lines, and then they
22 created a new deed.

1 So when I have a deed and I'm doing a
2 boundary survey, I use the most current deed of
3 record, because that is what the previous person
4 conveyed to the person that I'm working for. I
5 use the recent deed of record.

6 Q If a deed in the chain of the Estes
7 title, earlier than the one you looked at, called
8 for the boundary to be Little Antietam Creek,
9 would you be able to survey that, would you be
10 able to figure out where that boundary was?

11 A I believe so. Yes, if it called for the
12 creek, but I would want somebody to explain to me
13 why it was subsequently and more recently changed
14 to say, "Thence crossing the creek." Somebody did
15 something to make it more accurate, you know, to
16 define it better to say, "thence crossing the
17 creek."

18 And then when I have the adjoining deed
19 saying it starts in the west bank, you know, and
20 thence into the creek, and a course or two that
21 don't call for anything, and thence to a stone,
22 and the angle leans it to the west side, all the

1 evidence to this surveyor proves very strongly
2 that it -- both parties knew that they owned to
3 the west -- to the west side of the creek. "Both
4 parties," being before 2018.

5 Q Was it your -- was it your firm in 1990
6 that changed the monuments to the fence and the
7 blazed tree from the prior monuments?

8 A Yes. It was a more recent survey, a
9 more accurate survey, and we were trying to do our
10 best in following the footsteps of the original
11 surveyor and the intent of -- of that deed.

12 Q So when you refer to the adjoiner's deed
13 when you were answering Mr. Holder's questions
14 about this, and that his historical deed called to
15 the blaze tree and the fence, you were talking
16 about the blazed tree and the fence monuments that
17 your firm created in 1990; correct?

18 A We didn't create them. We found them.

19 Q Well, you added them to the description.
20 For the first time ever, you added them to the
21 descriptions as monuments?

22 A That's correct.

1 Q Because prior to that time, you didn't
2 go back and look at what the title was, whether it
3 was in or not in the creek. You did not do a
4 title search; right?

5 A I did not do a title search.

6 Q And is it unusual for persons having
7 meadowlands near a body of water like a creek to
8 create a fence for purposes other than delineating
9 a boundary line, such as keeping livestock from
10 the water?

11 A That's plausible.

12 Q Not plausible. I mean, don't a lot of
13 landowners do that to try to keep their livestock
14 away from a fast running stream like Antietam
15 Creek?

16 MS. JAMES: Objection. You can answer
17 if you know the answer.

18 A Yes. I've seen it before.

19 Q Okay. Would I be correct to say that if
20 the creek was the historical boundary line in the
21 deeds, prior to the deeds you looked at, the older
22 deeds, and the creek moved, I'd be correct to say

1 you don't -- you don't know whether it moved or
2 when it moved or why it moved or how much it
3 moved; is that correct?

4	A	That 's correct.
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5 Q Okay. Thank you, Mr. Frederick. Those
6 are all the questions I have for you, sir.

7 MR. HOLDER: So, Mr. Neal, do you have
8 some questions for Mr. Frederick?

9 MR. NEAL: I do.

10 MR. HOLDER: Okay. Go ahead and
11 proceed, sir.

12 EXAMINATION

13 BY MR. NEAL:

14 Q All right. Mr. Frederick, good morning
15 again.

16	A	Good morning.
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17 Q I represent Mr. Estes, as you know. I'm
18 going to ask you some questions. I'm going to try
19 not to tread over what Mr. Holder or Mr. Ruble
20 said, because they frankly got to a lot of what I
21 was going to get to. I may ask you about some of
22 your opinions, but I only want you to answer about

1 opinions you've already formed.

2 I don't want you coming up with opinions
3 on the fly, so if I'm asking you something you
4 haven't already formed an opinion on, please let
5 me know.

6 Let's see. Do you have a license as a
7 professional land surveyor or engineer or
8 something like that?

9 A I do. Both professional land surveyor
10 and professional engineer in the State of Maryland
11 and some other states.

12 Q Have those licenses ever been revoked
13 or -- or expired or anything like that?

14 A They have not.

15 Q Who's your current employer?

16 A I'm the president of Frederick, Seibert
17 & Associates. I joined this firm in 1986. I
18 joined with J. Harold Seibert, who was the county
19 surveyor from 1941 to 1972. Our firm was founded
20 in 1941 in Washington County, Maryland.

21 Q Have you given testimony in court before
22 as a land surveyor expert?

1 A I have.

2 Q Has there been an occasion when you were
3 offered as an expert where the court did not
4 accept you as an expert?

5 A Never.

6 Q How many times do you think you've
7 testified in court as an expert land surveyor?

8 A Well over a dozen. I don't know the
9 exact number.

10 Q All right. I'm going to bounce around a
11 little bit now. My apologies. All right. I will
12 share a screen here. All right.

13 Can everybody see this Plat 10955?

14 A I cannot yet. But it's -- I think
15 it's coming up.

16 MR. RUBLE: Aaron, what -- the trick for
17 me was there was a little button above the
18 document on my screen that says, "Start share," or
19 something like that.

20 MR. NEAL: It says I'm sharing. Stop
21 share.

22 MS. JAMES: There we go.

1 THE WITNESS: There. It just -- got it.

2 MR. NEAL: I guess my computer is slow.

3 Sorry about that.

4 Q All right. This document's previously
5 marked as an exhibit. I'm just going to ask you a
6 couple questions about this. If you look at -- I
7 just want to find what boundary line we're looking
8 at between the Estes and Holder/Uncle Eddies
9 parcels. I'm pointing at, right now, a line
10 labeled L10; do you see that?

11 A Yes.

12 Q And the point right here, is that the
13 first shared point between the Estes and Holder,
14 Uncle Eddies?

15 A Yes.

16 Q And then following that along until you
17 get to the 269.59 line that I'm circling right
18 now --

19 A All the way to the end, all the way to
20 the left. Yes. Right here.

21 Q And this plat that I'm circling here,
22 which is where the bridge abutment is, that is the

1 last point shared between the Estes and Uncle
2 Eddies property?

3 A Yes.

4 Q Are there any other boundary lines of
5 the Uncle Eddies/Holder properties that abut the
6 Estes property?

7 A None.

8 Q And the -- the 269.59 line, that is the
9 length of the line after adjustment for the DNR
10 survey of the railroad?

11 A Correct.

12 Q All right. And I'm going to just go
13 ahead and call this L10 to the bridge line, the
14 shared boundary line, rather than repeat that
15 whole statement over and over again. With that
16 said.

17 Is it your opinion to a reasonable
18 degree of professional certainty that the shared
19 boundary line shown on this plat, number 10955,
20 accurately depicts the actual boundary lines
21 between the Estes and the Holder/Uncle Eddies
22 property line?

1 A That is my professional opinion.

2 Q All right. I'm pulling up another
3 document, please let me know when you see it. It
4 should be labeled Greivell letter.

5 A I can see it now.

6 Q I think I spelled it wrong, but you get
7 the idea. Have you seen this document before?

8 A I just saw it for the very first -- this
9 morning.

10 Q So is it fair to say you haven't formed
11 any opinions with whether you agree or disagree
12 with Mr. Grievell's opinions?

13 A I disagree, after reading it. You know,
14 and, of course, I was called by the board and I
15 had to defend myself.

16 (Simultaneous cross-talking.)

17 Q Okay. Do you -- would you -- go
18 ahead --

19 A That's a year old. About. That's
20 roughly a year old. And I've already had to
21 provide the board with, you know, all of my
22 findings, etc.

1 Q Has the board issued any kind of opinion
2 with respect to this letter?

3 A Yes. They did. It has been dismissed.

4 Q Did you provide testimony under oath
5 with respect to this letter?

6 A No. I had to send them a full report of
7 everything that I did and I sent it to the board.
8 We never spoke. I didn't speak with anyone. It
9 was during COVID. Typically, I would have
10 preferred to have gone down there and met with
11 someone, but, of course, we could not do that.

12 Q Did your report to the board fully
13 express your opinions with respect to
14 Mr. Greivell's letter?

15 A I believe so. I -- again, I -- the
16 board didn't -- they gave me a simple one-page
17 letter that, and I'm not looking at it, so I don't
18 know -- I don't remember exactly what it said.

19 But it said something like, you know,
20 it's -- it is dismissed. So I don't know what
21 they took into consideration. I just don't know.

22 Q I guess, what I'm asking, to be a little

1 clearer is, you sent a report due to the board
2 receiving this letter; correct?

3 A Yes.

4 Q Was that report directly in response to
5 that letter, or was it in response to some inquiry
6 from the board?

7 A It was in response to an inquiry from
8 the board. They did not send me that letter that
9 I -- that I remember. I don't remember seeing
10 that letter when they sent that -- their inquiry
11 to me.

12 MR. RUBLE: Aaron, are you going to mark
13 the report?

14 MR. NEAL: Yeah. I think that will be
15 12. It's getting long here. That will be 12,
16 yes.

17 MR. RUBLE: Mr. Frederick's report; we
18 haven't seen that yet. Is that going to be 12.

19 MR. NEAL: The letter -- the letter will
20 be 12. I don't have the -- the report.

21 MR. RUBLE: Okay. I just want to make
22 sure because he's referring to a report. You've

1 asked him about a report and I wanted to make sure
2 it was an exhibit if you intended to make it an
3 exhibit. Right now, we don't have it, right?

4 MR. NEAL: Correct. I'm going to intend
5 to ask for it at some point, but I don't have it
6 right now.

7 A And I sent it -- everything down there,
8 and I -- of course, I have my original stuff,
9 but -- and I have probably a copy of the letter
10 that I sent to them. But I don't know that -- I
11 didn't prepare a report. It was a letter
12 explaining everything, and then documentation of
13 what I found and what I held in making my
14 determinations on these two properties without
15 creating a gap or a board or an overlap.

16 You know, that's what I explained to the
17 board.

18 Q Can you tell me why you disagree with
19 Mr. Greivell's letter?

20 A Well, which part of it? Scroll down a
21 little bit. Let me go to one part where it makes
22 it look like I'm changing bearings. Keep

1 scrolling down, I think a little further down.

2 Further down. Okay. Let's see, right there.

3 "Cause FSA changes in 1990."

4 Now, I'm not looking at my surveys. Is
5 there one further down where they have bearings of
6 what I did for the Estes?

7 Q Chart --

8 A Is there another one? Yes, right there.
9 This is the one I'm looking at. So notice where
10 it says, "FSA changes incorporated into Estes'
11 deeds," and it gives bearings and then the
12 distance of 28050, and now on the right side, a
13 bearing, and a different distance. Now, we've
14 already talked about why that distance is
15 different on the 28050 versus the 26959, but then
16 the next one down, they match perfectly in
17 distance.

18 The next one, perfectly in distance.
19 The next one, perfectly in distance, and the next
20 one perfectly in distance. And I -- if you caught
21 on when I was explaining, in 1990, we used -- and
22 I'd -- I'd have to look at that plat.

1 We used either an adjoining, bearing off
2 of somebody's plat or we floated a bearing off of
3 a compass, and -- and that's how we got the
4 bearings -- again, I'll go down through them -- on
5 Estes, 25-03-21 northeast, 34-3-21 northeast.

6 Now, the other thing, quickly, I'll
7 point out, if I'm looking due north and I turn my
8 head 180 degrees, I'm not looking due south. Does
9 everybody understand that? You understand that?
10 If I'm looking due north and I turn 180 degrees,
11 I'm looking due south. What I'm explaining here
12 is my bearing 25-03-21, and then the next one,
13 that's northeast, and over on the other side, it's
14 southwest.

15 I'm going in the same direction. It's
16 just one way I'm walking this way, and now I'm
17 following the line the other way. Now, let's talk
18 about the difference in bearings 25-03-21 versus
19 25-59-35. It's the same line, the angles between
20 the bearings are the same. It's just in 2018, I
21 was using GPS and I was now on Maryland grid north
22 versus in 1990, I was on an assumed datum.

1 So the angles between the lines are the
2 same because the bearings are different because of
3 the datum that I'm using. Does that make sense
4 to -- to both you and Mr. Ruble?

5 Q So the -- the lines are the same,
6 they're just more accurately depicted in the
7 second set of bearings?

8 A Yes. In the 2018 set of bearings. It's
9 now relative to Maryland grid north so that every
10 surveyor that uses GPS, should get very much the
11 same. Why did I say "very much"? Why not
12 "exact"?

13 Well, everything's off the satellites
14 and so there could be a little bit of difference,
15 but it is very, very minute. We're talking, you
16 know, an inch or two, not a foot or two or three.

17 Does everybody understand that? So
18 Mr. Greivell, it makes it look like I'm just
19 changing bearings when I think the board
20 understood, oh, I see what's going on, the deed
21 calls for a bearing, it's in the 1800s, and then
22 he does it in 1990, and we didn't have GPS and so

1 we've got this bearing. And then in 2018, we have
2 a different bearing, but if you know how to
3 calculate the angles between bearings, they will
4 be able to quickly see that it's the same angle.
5 If I'm turning a -- a 32-degree angle, a 45 --
6 whatever, it may be, it's the angle. The lines
7 are the same. The only thing that changed in any
8 of that, was in 2018, we now shortened it up along
9 the railroad once we knew where the railroad's
10 right-of-way was defined by their '93 survey.

11 On the Estes side, you know, I was never
12 asked to create a new description. If I were to
13 create a new description, I would shorten them to
14 the new railroads' distance, but that's not a
15 matter of this case. That's -- you know, that's
16 between he and the railroad. That's not a matter
17 of this case.

18 Q All right. So -- let me kind of go
19 through it one by one, the 1893 to 1990 calls,
20 those are the ones based on the compass and chain,
21 and are as accurate as they can get. But it was a
22 bit of estimation; is that fair?

1 A Well, what I did in 1990 is I tried to
2 use the distances from the 1893. You'll see
3 148.5, 148.5. You know, I am using what -- you
4 know, what was in an older deed. The course above
5 it, 280.50, 280.50. Now, 269.59. Because now,
6 we're tied in perfectly to a more up-to-date
7 survey. That's what surveyors try to do. When we
8 do an updated survey, we try to hold the
9 monumentation being the intent of the deed that --
10 where we find and more accurately limited by -- by
11 new measurements based on better technology, but
12 being the same land.

13 We're not trying to change boundaries.
14 We're just trying to update the description of it
15 for better technology. And, you know, the
16 monumentation, etc., found or if we don't find
17 anything, we try to hold the old deed calls where
18 we can.

19 Now, notice, let's go back to the 1990
20 deed where it comes across the creek and it says
21 90.75 feet. Well, I shortened that when I did
22 the -- the Remsberg to 57.27, why did I -- I think

1 that's it, maybe it's the one before that that I
2 shortened. Why did I shorten it? Because I found
3 a blazed tree. I found a possession line. So I
4 shortened it to match, Here is what everybody's
5 calling for now.

6 And what gives me the authority to just
7 start changing it? Well, I'm not saying I have
8 the authority. But here's what I know, those old
9 deeds did not mathematically close. That means
10 there's errors in it. They're systemic. That
11 means they can be in every line or they can in one
12 line. You don't know. But what do you base your
13 decisions on? You base your decisions on what you
14 now find in the field and the calls.

15 What do we know from the Remsberg deed
16 up there where it first comes across the creek
17 where the yellow line, the yellow area is. We
18 know that it clearly says that it's crossing the
19 creek to the west bank, so we know it's calling
20 for the west bank. Then it's over there, you
21 know, we try to follow it as best we can, but now
22 we're starting to use evidence that we're finding

1 where people are -- are making claims to it.

2 We also know, as it goes up along the
3 creek there, it goes to the west side. Both deeds
4 call for this, both deeds being Remsberg, Remsberg
5 to Jolis, Jolis to Estes, etc. That deed calls
6 for something at the west side up at the stone
7 abutment, and so does the Hudsell beam, the
8 predecessoring title to Uncle Eddies.

9 So I try, always, to follow the intent
10 of what the deeds are calling for. I don't do it
11 arbitrarily. I don't do it to take favors for one
12 person over another. I do it to follow the intent
13 of the deed. That is the integrity of a surveyor,
14 trying to do his job correctly.

15 Q Is that process that you just discussed
16 consistent with the standards and practices of
17 land surveyors in Maryland?

18 A It is. And I would hope every surveyor
19 does the same thing. They do it to the best of
20 their ability, trying to find monumentation,
21 trying to meet the intent of the deed.

22 Can surveyors disagree, absolutely.

1 You know, they can disagree because of
2 whatever, especially in old deeds. If you have
3 two great deeds side by side and you find the
4 monumentation, the chance for disagreement is
5 almost zero.

6 But in large parcels, greatness
7 closures, poorly written descriptions where you're
8 trying to follow the intent, they can disagree.
9 Although, in my opinion, it's hard to disagree
10 with a deed that calls for crossing the creek to
11 the west bank, you know, and -- and when you get
12 to the end of it, a stone abutment on the west
13 bank. It -- it's hard to disagree with that.
14 That's the -- that's this surveyors' opinion and I
15 would think it may be a lot of surveyor's
16 opinions. It's the written word of the deed.

17 Q Are you aware of any surveyors that have
18 given contrary opinions to what you have decided?
19 Have identified as the boundary line between the
20 Estes and Holder properties?

21 A I am aware that Mr. Holder on my
22 recommendation, got an independent survey done

1 mainly in this area. He asked me to change it. I
2 would not do that. I could not do that in all
3 good consciousness. I believe I got it right the
4 first time. And -- and he got Fox and Associates
5 to do an independent survey and I know nothing
6 more than that. I don't -- I have not seen
7 anything from Fox and Associates where they --
8 they disagree with my survey.

9 But, obviously, I'm going to make an
10 assumption, they must for it to be going this far.

11 Q I'm not frozen. I'm just strolling
12 through my notes to see what's already been dealt
13 with.

14 A Take your time.

15 Q When did Mr. Holder ask you to change
16 your opinion regarding the location of the
17 boundary lines between the Holder property and
18 Estes property?

19 A I don't know the exact date.
20 Mr. Greivell may know. He was -- he came into my
21 office with Mr. Holder. He may have that -- that
22 date. I don't know the exact date of that.

1 Q Do you recall what the rationale was for
2 asking you to change your opinion?

3 A They furnished me an old deed again and
4 tried to explain that -- that, you know, it should
5 go down the creek. You know, and I said, Listen,
6 that's not my -- I don't think so. In my
7 professional opinion, it does what I've always
8 held it to do. And I suggested that they get
9 another surveyor to -- you know, to get an
10 independent opinion on that.

11 Q What old deed did they show you; do you
12 remember?

13 A I -- I remember it was something like a
14 W. Mccay. Something like that. It was very old
15 deed. Probably in the 1800s.

16 Q And before telling them that you
17 wouldn't change your -- or didn't change your
18 opinion, did you review that deed?

19 A Yes. I looked at it before. In fact, I
20 think it was the one I looked at maybe when I did
21 that letter for Mr. Holder that he had asked me to
22 do to make it -- you know, maybe better for him in

1 court when he was against Mr. Estes the first
2 time.

3 When -- when he was looking for
4 something that would -- you know, in his opinion,
5 he always, I guess, thought he went to the creek.
6 And so I wrote that letter with the understanding
7 that he and Mr. Estes were going to try to work
8 things out.

9 Q All right. Now, the letter you sent
10 referred to a deed at liber 454, folio 229.

11 Is this the deed you were talking about?

12 A I think they gave me another older one
13 that said -- it was like a W -- I think there was
14 an older one than that. But that is one that I
15 did look at when -- that's the one they gave me
16 the first time, that -- that I tried to plot to
17 see how it could possibly fit in there and would
18 it -- would it change any -- you know, decision or
19 could it be plausible that maybe it went down the
20 center line.

21 We do know that some places, it goes
22 down -- I'm not going to say down the center line

1 of the creek -- but goes into the creek, even my
2 survey shows that some of it goes into the creek.

3 Q I think you testified about this before,
4 but what is the significance between a blazed
5 tree?

6 A A blazed tree is a -- a marking for a
7 surveyor when we see them that tells us that some
8 surveyor before us, probably a surveyor --
9 remember back in the 1800s and early 1900s, the
10 term "surveyor" doesn't mean you were a licensed
11 surveyor. You know, there was no licensed -- I
12 don't know when the licensing board got started.

13 But there's -- in the olden days, there
14 was a lot of people that did not go to college,
15 that did not actually have a professional license,
16 but yet did survey. And so somebody put a blaze
17 on a tree and that's an indication to a surveyor
18 that somebody is saying that tree's a witness to a
19 property corner.

20 Q Mr. Frederick, thank you. I have
21 nothing further right now. I guess I'll leave it
22 open to redirect from Mr. Holder or Mr. Ruble.

1 MR. HOLDER: Mr. Frederick, I just had a
2 few questions about the letter that Mr. Neal
3 brought up. And I believe that's going to be
4 Exhibit 15; is that correct, Mr. Neal?

5 (Exhibit 15 was marked for
6 identification.)

7 MR. NEAL: The court reporter asked for
8 a break.

9 MR. RUBLE: The stenographer wants a
10 break.

11 MR. HOLDER: Off the record. Thank you.
12 (Off the record.)

13 EXAMINATION

14 BY MR. HOLDER:

15 Q Okay. Mr. Frederick, I'm going to ask
16 the host to bring up a document titled
17 LSMREPS.pdf, and place it on the screen and
18 this'll be Exhibit 16.

19 (Exhibit 16 was marked for
20 identification.)

21 Q Have you seen this document before,
22 Mr. Frederick?

1 A Yes. I have.

2 Q Okay. Mr. Host, could you scroll down
3 to number F, please? I'm sorry. It's going to be
4 the section called "Plats." If you just do a
5 search for "plats." It may be section nine. I
6 might be -- yeah. Okay. There it is.

7 Would you like to see the title of that
8 section, Mr. Frederick?

9 A Yes, please.

10 Q Okay. So we're in -- we're in boundary
11 surveys; okay?

12 A Okay.

13 Q Okay. And this document, is this the
14 minimum requirements that you must do when
15 completing a survey or plat under your duty of
16 care?

17 A Is it the minimum? Yeah, I believe it
18 may be considered the minimum.

19 Q Please just ask the host if you need him
20 to move the document at all, Mr. Frederick; okay?

21 A What do you want me to read?

22 Q I want you to read number -- let's see.

1 On -- on plats, are you required to draw all deed
2 overlaps based on this document?

3 A If deed overlaps exist.

4 Q Did deed overlaps exist when you did
5 plat 10995?

6 A I don't believe so, no.

7 Q What would you call -- I'm sorry. Go
8 ahead.

9 A Remember when I was with you in the
10 field, I showed you where that line was, and there
11 didn't seem to be any issue at that time. You
12 know, I don't think there's a deed overlap. You
13 think there's a deed overlap. And maybe -- maybe,
14 I don't know, maybe you got the other professional
15 surveyor to think there's a deed overlap, but at
16 the time I did this work, I did not see a deed
17 overlap. So I don't -- to this day, I don't
18 believe there's really a deed overlap.

19 Q What if I took a mini track and I drove
20 it down the old railroad, that 11-foot section, do
21 you think the Department of Natural Resources
22 would think there's a deed overlap?

1 MR. NEAL: Objection.

2 MS. JAMES: You can answer if you know
3 the answer.

4 A Now that we know what their deed is, as
5 a result of a recent survey in '93, and if you
6 were on their lands, yes, I would think -- I
7 didn't create a deed overlap between what I did
8 for you and the natural resources because I was
9 aware of that in '93. In 1990, it wasn't even
10 done yet. Those lines were not computed --
11 recently surveyed. So, as far as you and
12 Mr. Estes are concerned, I don't believe -- I
13 think that there is a deed overlap. To me, it's
14 very clear where the boundary is.

15 Q Is there a deed overlap between Uncle
16 Eddie's Brokedown Palace, and the State of
17 Maryland benefit of the Department of Natura
18 Resources and an overlap between Benjamin Estes,
19 Plat 2 and State of Maryland benefit of the
20 Department of Natural Resources?

21 A Not in my opinion. Not in my opinion.
22 My opinion is, I gave you up to those boundaries

1 of those adjoiners.

2 Q You -- you gave that amount?

3 A Well, I held that line, because that's
4 where I believe those lines are. I don't believe
5 there's a deed overlap.

6 Q What changed your opinion from 1990
7 until 2018 that there's line changes?

8 A Between Estes and the DNR?

9 Q Yes, sir.

10 A A 1993 survey that -- that seplaced (ph)
11 my 1990 survey is what changed my opinion.

12 Q A survey that you thought was more
13 accurate than yours?

14 A Yes. Yes. Because they surveyed a much
15 longer baseline to determine where those
16 right-of-ways are.

17 Q Do you -- do you know how they
18 determined the right-of-way for the -- the land
19 there in question?

20 A Well, to answer your question very
21 frankly, no. I don't because I wasn't the
22 surveyor in charge. To answer your question of

1 how they probably did it. Yes, they used the
2 valuation maps from the railroad and surveyed the
3 center line of it and used the offsets on that val
4 map to come up with the boundaries.

5 So did they do that perfectly? I don't
6 know. I didn't do the work. Is that what they
7 probably did? Yes, I bet that's what they did.

8 Q So have you ever read one of the deeds
9 out of liber 1015, folio 796 in sequence?

10 MR. NEAL: Objection.

11 A Can you show it to me? No, I couldn't
12 tell you what deed I read last night.

13 Q Mr. Host, could you please show liber
14 1015, folio -- okay.

15 Is this deed liber 1015, folio 796?

16 A That's what it says on the top.

17 Q Okay. Does it purport to be a quitclaim
18 deed between SXS Railroads and the State of
19 Maryland to the benefit -- I'm sorry -- to the use
20 of the Department of Natural Resources?

21 A That's what it says.

22 Q Okay. Would you like to review this

1 deed further to confirm it is, in fact, the
2 adjoiner to Mr. Estes and Uncles Eddies Brokedown
3 Palace?

4 A No. I don't think I want to.

5 Q Okay. Are you sure that --

6 A Tell me what we're digging at here.

7 Q I would just like to show you how
8 they're describing the land in the deed, that it's
9 a center line of the railroad as built.

10 Are you aware of that?

11 A Yup. That's what the val maps would
12 show.

13 Q And then they move 33 feet off the
14 center line?

15 A Yes. That's pretty standard.

16 Q And then they -- and then they add
17 either a foot or a foot and a half, depending if
18 you're in a cut or a vertical; do you understand
19 that?

20 A Yes. For the slopes.

21 Q How did they determine the vertical?

22 A By the slope of the land.

1 Q How did they know how high the tracks
2 were if the tracks were no longer there in '93?

3 A Well, I think the embankments, a lot of
4 them are still there, and once they got the center
5 line, the offsets are shown on those val maps.

6 Can you bring up the val maps that they
7 would have used?

8 Q Host, please bring up the val --

9 A -- evaluation maps directly next to you
10 and Mr. Estes, can you bring them up?

11 Q How about a five-drawing overlay,
12 Mr. Frederick, of the val maps, the CAG file, and
13 all of your plats overlaid together?

14 A Okay. Bring it up.

15 Q This'll be Exhibit 17 -- I'm sorry, 18.
16 The liber 1015, folio 796 in sequence was
17 Exhibit 17.

18 (Exhibits 17 and 18 were marked for
19 identification.)

20 Q Host, would you mind? I'D like to blow
21 that up right there, just allow Mr. Frederick
22 to -- so what we have here is a val map from 1919,

1 and that's going to be the blue with the larger
2 white lines and some of the yellow writing. The
3 pink is going to be the DNR's top secret CAG file
4 that AESI provided for them. We have Plot 4040.
5 And we also have Plat 10955.

6 Do you see those four documents?

7 A Yeah. I will tell you on this computer,
8 it is very hard to try to see everything.

9 Q Could we zoom in tighter? (Pause.)
10 Right there. Could we zoom in right on the corner
11 of the west bank of the Little Antietam Creek, and
12 there's a purple mark, if we can -- that might be
13 as tight as we can go.

14 Do you -- it's just too faded, but if I
15 told you that that purple mark said that that was
16 a Frederick, Seibert & Associate rebar and cap
17 set, would you know where that is?

18 A Is it at the very top of the hill on the
19 west bank?

20 Q It's at -- that's going to be down by
21 the rock abutment that we talked about, where the
22 deed starts, the Uncle Eddies deed?

1 A Is it -- is it up on the hill? It's not
2 down by the creek? It's up on the hill; is that
3 correct?

4 Q It's down by the creek from -- from what
5 I understand. See the floodplain there with the
6 crosshatches. And this might just be a little bit
7 too hard to see on a small screen.

8 A It is very, very hard to see.

9 Q Okay.

10 A Very, very hard to see.

11 Q Okay.

12 A I remember seeing an iron pin on the
13 west bank up on a hill above the west abutment of
14 the railroad tracks, there was an iron pin that I
15 saw there a year or so ago. In that area -- in
16 that area --

17 Q Okay.

18 A That's why I'm asking if that orange or
19 purple arrow is pointing to that purple pin. And
20 I just --

21 Q It is -- if you go up a little bit
22 and -- and move the mouse around up a little bit.

1 It's written very lightly and it says Frederick
2 Seibert rebar and cap set that the -- just like
3 over on the right side. If you look where there's
4 not so much busyness, do you see how that says
5 Frederick, Seibert & Associates rebar and --

6 A Yup. Yup. Yup.

7 Q So AESI has identified your survey as
8 encroaching their survey; would that be correct?

9 A Well, that val map looks like it is.
10 I'm not saying that it's correct or not. I don't
11 know. I didn't get to do my own work, but that
12 looks like it is.

13 And would I be surprised at that area
14 with that encroachment, I would because that
15 survey is more recent. Even though the val map is
16 older, when we did it, we didn't have a val map.
17 And we held -- we tried to hold, I think, the
18 33 feet from what we kind of tried to average in
19 as the center line. So --

20 (Simultaneous cross-talking.)

21 Q Okay. I understand that.

22 A -- along Estes, I'm not. I would be

1 more surprised because I tried to tie in perfectly
2 in 2018, so I made sure that I got your boundary
3 correct with the DNR.

4 Q Okay. So that area of overlap and using
5 the COMAR minimum survey regulations, are you
6 required by law to illustrate that deed overlap
7 when you perform a boundary survey, sir?

8 A If I would have known it then, yes, I
9 would have. I didn't know it then.

10 Q Is -- is knowing the law part of
11 breaking law?

12 MS. JAMES: Objection.

13 A I -- I don't understand that question.

14 Q It's -- it's a legal question. If you
15 run a red light, whether you know it was red or
16 not, did you break the law, Mr. Frederick?

17 MR. NEAL: Objection.

18 A I'm not going to answer that question.
19 I see no relevance to that question. I don't
20 understand.

21 Q Scope of deposition 2402, a subject can
22 make a legal opinion. This is -- it's not -- it's

1 not -- everybody makes a legal opinion every day.
2 You decide if you're going to speed or not. You
3 decide what the speed limit is. The speed
4 limit --

5 MS. JAMES: Objection. If it's a
6 relevant question, then, fine, but this is not
7 relevant. There's no speeding. There's no red
8 lights involved.

9 BY MR. HOLDER:

10 Q Does not knowing an overlap negate your
11 need to draw the overlap per the law
12 Mr. Frederick?

13 MS. JAMES: Can you repeat that? I -- I
14 didn't hear that.

15 Q Does not -- does willful blindness or
16 deliberate ignorance of overlap negate your need
17 to draw it?

18 MR. NEAL: Objection.

19 MS. JAMES: Objection.

20 Q Mr. Frederick, did COMAR and minimum
21 survey regulations require you to draw that
22 overlap in order to comply with the law?

1 A Mr. Holder, you clearly said "willful."
2 Did I purposefully do it? No. Did I know about
3 that when I did the Estes? No. But how does that
4 area affect your case with Estes? I don't
5 understand why we're looking over there.

6 Did I purposefully do that? No. Had I
7 had those val maps, I would have shown that. We
8 found the deed that said 33 feet. We used
9 something like that. We made an assumption. But
10 this part of it that you're looking at has nothing
11 to do with your case with Estes down on this
12 street, so why are we wasting time on this?

13 Q In 2006, when you did Plat 9186, AESI
14 had done this survey, if you had made proper
15 inquiry, would you have been caused to know that
16 there was a deed overlap?

17 MR. NEAL: Objection.

18 A Yes. I would have. But I think I
19 explained that already. We pulled what was in our
20 file, assumed it to be correct and just used the
21 old stuff. So that's what we did back then.

22 Q Okay.

1 A We didn't go -- we didn't go digging.
2 We were doing something for forestation here.

3 Q Okay. I understand and I appreciate you
4 asking my -- answering my questions. I would like
5 to move to the letter Mr. Neal brought I believe
6 it was Exhibit -- was that 14 or 15, Mr. Neal?

7 MR. NEAL: It was --

8 Q I have it up, but --

9 MR. NEAL: It was --

10 MR. HOLDER: It's the letter from
11 Mr. Greivell to the -- Mr. Comingford (ph), and if
12 the host would just slowly start scrolling up on
13 the deed. Right there, that 1874, WMCKK number
14 six, is that the deed that you were shown in
15 office with Mr. Frederick -- I'm sorry --
16 Mr. Greivell?

17 A I believe so. I remember it had a WMK
18 something.

19 Q Okay. And have you ever looked at the
20 title chain back to that deed?

21 A I never have. You gave me bits and
22 pieces when you wanted me to -- to look at that

1 again to see if it would persuade me to change
2 that line. I saw nothing in there that changed my
3 mind.

4 Q Okay. All right. Could you scroll to
5 the next page, please, Mr. Host? Okay. This --
6 this paragraph up top, do you agree with that
7 paragraph, or do you disagree with that paragraph?

8 A Well, that's what it says. It's not
9 that I agree or disagree. That's -- that's just
10 what it says in there.

11 Q Okay. The next paragraph and chart, do
12 you agree or disagree?

13 A Are you talking about these causing
14 questions coming from 1874 and consistently held
15 up through 1964, Hudson deed R, is that what
16 you're talking about?

17 Q Yes.

18 A Yup. Yes. That's what it says in that
19 deed.

20 Q Okay. Can you keep scrolling, please?
21 Next -- just to the next page, please.

22 Okay. This next paragraph, do you agree

1 that these change calls crossed over the Hudsell
2 parcel which had been established for over a
3 century, and, as a result, the 1994 confirmatory
4 deed purported to assume on behalf of the Estes
5 parcel, the land actually belonging to the
6 Hudsells; do you agree?

7 A I -- I disagree with that. I -- again,
8 when I did the Remsberg deed, their deed clearly
9 says on the west bank, it has -- even some of the
10 distances match. It says along the west bank.

11 So the two deeds, between themselves on
12 opposite sides of the creek, match some places.
13 But in the Remsberg deed, it more particularly
14 calls for being on the west side.

15 Q And you did no title work at all to go
16 back farther than 1990?

17 A I did not when I did the Remsberg deed,
18 no, and I didn't when I did yours. I used the
19 most recent deed. That is what Hudsell had and
20 that's what I used to do your survey.

21 Q Mr. Nagel.

22 A Go ahead. Mr. Nagel what?

1 Q Mr. Nagel said to me, a survey can only
2 be as accurate and as good as the title work given
3 to the surveyor. Do you agree or disagree?

4 A There could be some truth to that, yes.
5 That doesn't mean it changes anything, but it just
6 gives you more information to go on.

7 Q In the beginning of this deposition --
8 if Mr. Greivell would bring up Exhibit 2.

9 And you remember the yellow area that we
10 decided was a deed overlap and we kind of moved to
11 calling it a disputed line at this point?

12 A Yes. You call it -- you call it a deed
13 overlap.

14 Q Well, you did as well. You called it
15 that in your e-mail; did you not?

16 A Only as a result of this deposition.
17 But previous to this, you know, and to this day, I
18 believe the Remsberg deed and going forward, that
19 line is the true property line, and the yellow
20 area would be owned by Mr. Estes and you would own
21 on the west side of it, you, being, you know, the
22 agent for Uncle Eddies.

1 (Simultaneous cross-talking.)

2 (Reporter admonition.)

3 Q Okay. Why would the deed overlap stop
4 at the creek?

5 A Use your pointer and tell me where it's
6 stopping. Well, it stops right there because
7 Estes owns on one side and you own on the other.
8 When it goes into the creek, it is my
9 understanding that if you can float down there in
10 an innertube, it's navigable, and so you would
11 both have rights. And fishermen may have rights
12 in a canoe or a kayak to go down through that
13 creek.

14 Q Okay. Do you remember we had a
15 conversation about junior deeds and master deeds
16 or senior deeds, perhaps?

17 A I don't remember any conversation with
18 you about that. But I'm not saying one did not
19 occur. Junior rights and senior rights.

20 Q Yeah. Could you explain those, please?

21 A So if I have a deed for 100 acres, and
22 it's -- it's not a perfect deed, it miscloses, and

1 I sell you 10 acres of 100 leaving me 90. So I
2 clearly conveyed to you 10 acres and I should have
3 90. And then I have 90 surveyed and there's only
4 70 there. You still have your 10 because you came
5 from that, you don't share in the loss.

6 Q Okay. I understand. Mr. Frederick,
7 that's all the questions I have for you today. I
8 appreciate your time. And you're released.

9 A Thank you very much.

10 MS. JAMES: Any other questions? Did
11 anyone have any other questions for Mr. Frederick?

12 MR. NEAL: Unless Mr. Ruble has anything
13 to add, I don't have anything further.

14 MR. RUBLE: No further questions, and
15 Madam Stenographer, on behalf of my client, I do
16 not order a transcript. I'll have to check with
17 her and get back to you if you want one, but on
18 the record today, I am not ordering one. Okay.

19 MR. NEAL: I take a copy.

20 (Reporter clarification.)

21 MS. JAMES: Also, in light of the filing
22 referred to by Mr. Ruble and equally accessible to

1 all parties in this case, and the fact that the
2 lines of questioning have clearly gone into expert
3 testimony, have requested expert testimony from
4 all parties present at this deposition,
5 Mr. Frederick will not be voluntarily appearing
6 for a second deposition, absent court order
7 requiring him to do so.

8 Additionally, in light of Mr. Holder's
9 April 7th, 2021 e-mail, coupled with the fact that
10 no counsel has sought or re-requested any
11 documents from Mr. Frederick in advance of this
12 deposition, and that counsel has referred to and
13 relied on documents prepared by Mr. Frederick
14 related to this litigation throughout this
15 deposition, Mr. Frederick will not be appearing
16 voluntarily for a second deposition absent a court
17 order requiring him to do so.

18 MR. HOLDER: Okay. Thank you. Thank
19 you. Off the record. Thank you. Thank you so
20 much. Plaintiff will order a copy of the
21 transcript.

22 MS. JAMES: I will be in touch if we are

1 going to request a transcript, but not as of this
2 moment.

3 (Off the record at 12:24 p.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Sydney Crawford, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the foregoing transcript is a
5 true and correct record of the testimony given;
6 that said testimony was taken by me
7 stenographically and thereafter reduced to
8 typewriting under my direction; that reading and
9 signing was not requested; and that I am neither
10 counsel for related to, nor employed by any of the
11 parties to this case and have no interest,
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 hand and affixed my notarial seal this 24th day of
15 May, 2021.

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22 My commission expires: May 15, 2024



00984 01002

1002

After reconciliation please deliver to:
Western Maryland Title Services, Inc.
125 W Washington Street
Hagerstown, Maryland 21740

CLERK OF THE DISTRICT COURT
WASHINGTON COUNTY

Received for Record: Feb. 27, 1991
at 4:20 o'clock P. M.
Liber 984, folio

THIS CONFIRMATORY DEED, Made this 13th day of November, 1990, by Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984, hereinafter referred to as Grantors.

WHEREAS, on June 28, 1990 the Grantors conveyed unto the Grantees certain parcels of land situate along both sides of Mt. Hebron Road in Election District No. 19, Washington County, Maryland, by deed dated June 28, 1990 and recorded in Liber 960, folio 502 among the Land Records of said County; and

WHEREAS, since the aforesaid conveyance, the property has been surveyed, and the Grantors and Grantees desire to confirm the conveyance with the new survey description.

WITNESSETH: That for and in consideration of the premises and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey and confirm unto Richard M. Jolles and Ann P. Matheson, his wife, all those two (2) tracts or parcels of land, together with the improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, situate on both sides of Mt. Hebron Road in Election District No. 19, Washington County, Maryland, and being more particularly described on Schedule A attached hereto.

The above-described property is conveyed subject to all conditions, restrictions, easements and rights of way of record applicable thereto.

WITNESS the hands and seals of the said Grantors.

WITNESS:

Ellis G. Remsburg (SEAL)
Ellis G. Remsburg, Trustee
under a Trust Agreement dated
August 20, 1984

Louise R. Gray

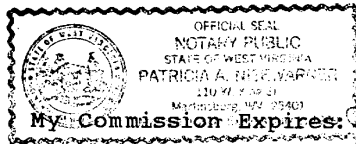
Alice V. Hockenberry (SEAL)
Alice V. Hockenberry, Trustee
under a Trust Agreement dated
August 20, 1984

Recorded By
Western Maryland Title Services, Inc.
Document No. 1 of 2

STATE OF ^{West Virginia} ~~MARYLAND~~, COUNTY OF ^{Berkeley} ~~WASHINGTON~~, To-Wit:

I HEREBY CERTIFY, That on this 13th day of November, 1990, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984 and did each acknowledge the foregoing deed to be their act and deed and that there was no monetary consideration for the execution of this deed.

Witness my hand and Official Notarial Seal.



Patricia A. Rosewarner
Notary Public

THIS IS TO CERTIFY, That the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Kent N. Oliver, Attorney

MAIL TO: Richard M. Jolles
22 Mt. Hebron Rd.
Keedysville MD 21756

AGRICULTURE TAX -
ACREAGE Brenda Cordell
CLERK

TAXES WAIVED

FEB 27 1991

Todd L. Hershey, Treasurer

MB

RECEIVED FOR TRANSMISSION
State Department of
Assessments & Taxation
for Washington County

B. Cordell 2-27-91
By _____ Date _____

SCHEDULE A

All those lots or parcels of land, together with the improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, situate on both sides of Mt. Hebron Road approximately 1/4 mile southeast of its intersection with North Main Street in the Town of Keedysville, Election District 19, Washington County, Maryland and being more particularly described in accordance with a survey by Frederick, Seibert & Associates, Inc. as follows:

PARCEL 1: Beginning for the outline thereof at an iron pin and cap set at the intersection of the south margin of Mt. Hebron Road and the southeast margin of Bell Lane, running thence with the south margin of Mt. Hebron Road South 63 degrees 30 minutes 08 seconds East 338.58 feet to a point, thence South 65 degrees 52 minutes 53 seconds East 568.51 feet to an iron pin and cap set, thence North 83 degrees 18 minutes 44 seconds East 110.17 feet to a point in the fourth or North 79 degrees 31 minutes 07 seconds West 330.00 feet line of the deed to Charles C. Danner (Liber 809, folio 425) running thence with part of the fourth line reversed South 79 degrees 31 minutes 07 seconds East 217.94 feet to an iron pin and cap set, thence along lands of Roger Burtner (Liber 756, folio 137) and John T. Burtner (Liber 756, folio 140) South 15 degrees 17 minutes 58 seconds East 119.50 feet to an iron pin and cap set, thence along the centerline of the existing lane, (Mt. Hebron Road) South 10 degrees 57 minutes 21 seconds West 232.83 feet to a point, thence leaving said centerline South 58 degrees 19 minutes 59 seconds West 14.73 feet to an iron pin and cap set at the end of a stone row, running thence along other lands of Ellis G. Remsburg South 58 degrees 19 minutes 59 seconds West 398.87 feet to an iron rod found at the end of a stone row, thence with said stone row and lands of the Mayor and Council of Keedysville (Liber 332, folio 50) North 47 degrees 05 minutes 40 seconds West 116.96 feet to an iron pin and cap set at the end of said stone row, thence North 20 degrees 55 minutes 47 seconds West 157.06 feet to an iron pin and cap set, thence along other lands of the Mayor and Council of Keedysville (Liber 332, folio 49 and Liber 348, folio 8) North 43 degrees 29 minutes 49 seconds East 26.71 feet to a concrete monument found, thence North 57 degrees 06 minutes 05 seconds East 468.15 feet to a concrete monument found on the south side of the existing lane, thence North 64 degrees 39 minutes 45 seconds West 142.49 feet to a point in the stream, thence at or near the centerline of said stream South 53 degrees 30 minutes 09 seconds West 73.92 feet to a point, thence South 80 degrees 52 minutes 36 seconds West 86.79 feet to a point, thence South 55 degrees 22 minutes 15 seconds West 190.00 feet to a point, thence South 55 degrees 04 minutes 15 seconds West 106.00 feet to a point, thence leaving said stream South 81 degrees 45 minutes 37 seconds West 229.29 feet to an iron pin

and cap set, thence along lands of the Mayor and Council of Keedysville (Liber 332, folio 50) and lands of Austin Flook (Liber 855, folio 1074) South 41 degrees 22 minutes 59 seconds West 586.94 feet to a corner fenceline tree, thence South 53 degrees 33 minutes 31 seconds East 43.92 feet to the intersection of a stone row and post and wire fenceline, thence along lands of Nicholas Diavatis (Liber 456, folio 14) South 23 degrees 45 minutes 25 seconds West 315.15 feet to an iron pin and cap set, thence South 11 degrees 29 seconds 47 minutes West 86.08 feet to a corner fencepost, thence along the right of way of the abandoned Baltimore and Ohio Railroad and crossing the Little Antietam Creek North 37 degrees 15 minutes 31 seconds West 279.21 feet to an iron pin and cap set, thence along the west side of said creek and along lands of Harry C. Hutzell, Jr. (Liber 408, folio 137) North 25 degrees 03 minutes 21 seconds East 280.50 feet to a point, thence North 34 degrees 03 minutes 21 seconds East 148.50 feet to a point, thence North 2 degrees 51 minutes 25 seconds East 203.44 feet to a fence post, thence North 1 degrees 14 minutes 19 seconds West 57.27 feet to a fence post, thence North 55 degrees 59 minutes 35 seconds West 55.83 feet to a blazed fenceline tree, thence crossing the Little Antietam Creek North 22 degrees 50 minutes 44 seconds East 78.38 feet to an iron pin and cap set, thence South 87 degrees 23 minutes 59 seconds West 113.20 feet to an iron pin and cap set at the end of the third or North 37 degrees 28 minutes East 233.62 feet line of Parcel 1 of the deed of Bryan C. Smith (Liber 888, folio 1015), thence with the fourth line of said deed North 3 degrees 39 minutes 44 seconds East 87.00 feet to a point in a stone row, thence along lands of Vernon P. Hammond North 4 degrees 00 minutes 34 seconds East 209.86 feet to an iron pin and cap set, thence along lands of T.W. Adams (Liber 919, folio 533) North 41 degrees 52 minutes 50 seconds East 136.13 feet to a corner fence post, thence North 39 degrees 17 minutes 16 seconds West 32.00 feet to a point in the southeast margin of Bell Lane, thence along said margin North 55 degrees 28 minutes 56 seconds East 226.45 feet to the place of beginning; CONTAINING 19.60 acres of land, more or less;

Said lands being all of Tracts 'A' and 'B' of Parcel 1 of the deed from Olive C. Remsburg to Ellis G. Remsburg and Alice B. Hockenberry, Trustee, by deed dated August 20, 1984 and recorded in Liber 769, folio 199 among the Land Records of Washington County, Maryland.

PARCEL 2: Beginning at an iron pin and cap set at the end of the fourth or North 79 degrees 31 minutes 07 seconds West 330.00 feet line of the deed from Jennifer D. Butts to Charles C. Danner and Patricia Ann Danner, his wife, by deed dated May 5, 1986 and recorded in Liber 809, folio 425 among the Land Records of Washington County, Maryland, running thence with part of the fifth line of said deed North 9 degrees 28 minutes 53 seconds East 750.70 feet to a point, thence running North 73 degrees 27 minutes 27 seconds West 290.69 feet to a corner fence

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post, thence South 44 degrees 09 minutes 40 seconds West 195.11 feet to a fence post, thence along the southeast margin of Mt. View Lane South 48 degrees 45 minutes 33 seconds West 342.63 feet to a point, thence along lands of Michael T. Swiger (Liber 804, folio 548) and Franklin J. Shifflet (Liber 541, folio 818) South 63 degrees 42 minutes 25 seconds East 208.54 feet to a metal fence post, thence South 46 degrees 09 minutes 35 seconds West 200.00 feet to an iron pin and cap set in the north margin of Mt. Hebron Road, thence with said margin South 65 degrees 52 minutes 53 seconds East 554.23 feet to the place of beginning; CONTAINING 7.57 acres of land, more or less;

Said lands being all of Parcel 2 of the deed from Olive C. Remsburg to Ellis G. Remsburg and Alice V. Hockenberry, Trustees, by deed dated August 20, 1984 and recorded in Liber 769, folio 199 among the Land Records of Washington County, Maryland.

PARCEL 1 AND PARCEL 2 HEREIN BEING all of the same lands and property which were intended to be conveyed unto Richard M. Jolles and Ann P. Matheson, his wife, by Ellis G. Remsburg and Alice V. Hockenberry, Trustees, by deed dated June 28, 1990 and recorded in Liber 960, folio 502 among the Land Records of Washington County, Maryland.

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, Et Al

Defendant(s)

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CASE NO.: C-21-CV-20-000430

Consolidated with;

CASE NO.: C-21-CV-21-000130

ORDER

Upon consideration of the Defendant Justin Holder's Motion to Dismiss Count V -
Quiet Title and opposition filed thereto, it is this _____ day of

____, 2021 by the Circuit Court of Washington County, Maryland,

ORDERED that Count V - Quiet Title is Dismissed

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
holder2004@Gmail.com

Aaron Neal, Esq.,
Talley Kovacs Esq.,
Matthew Ruble, Esq.,
Robert Kline, Esq.,
Justin Holder, Pro Se

Judge

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES

Plaintiff

v.

Case No. C-21-CV-20-000430

JUSTIN HOLDER, *et al.*

Defendants

**PARTIAL OPPOSITION TO JUSTIN HOLDER’S
SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Plaintiff, by and through his attorneys, Mark W. Schweitzer, Aaron D. Neal, and McNamee Hosea, P.A., responds in opposition to Justin Holder’s Motion to Dismiss Count V, and says:

I. OVERVIEW.

The instant motion is the latest in a long line of dispositive motions in which Justin Holder (“Holder”) seeks again to dismiss Count V (Quiet Title) of the Plaintiff’s Second Amended Complaint, this time on the basis that there is a prior case pending to adjudicate title to the property at issue. There is not now, and there was not at any point prior to Plaintiff seeking quiet title relief in this case, any other case pending in which title could or would be adjudicated. As such, Holder’s motion should be denied.

II. FACTS.

1. On January 22, 2020, Plaintiff filed an *in personam* action for trespass damages against Holder in the District Court of Maryland for Washington County, Case No. D112CV20007201 (“EvH One”).

2. On November 16, 2020, Plaintiff filed a second lawsuit against Holder and his wife relating to their trespasses, Case No. C-21-CV-20-000430, in the Circuit Court for Washington County, Maryland (“EvH Two”).
3. On March 17, 2021, Plaintiff filed his First Amended Complaint in EvH Two, asserting, among other claims, Count V (Quiet Title) and Count VI (Ejectment). *See* First Amended Complaint – EvH Two (March 17, 2021).
4. On April 12, 2021, EvH One was transferred to the Circuit Court for Washington County, Maryland and assigned Case No. C-21-CV-21-000130. *See* Order – EvH One (April 12, 2021).
5. On August 20, 2021, EvH One was consolidated with EVH Two. *See* Order (August 20, 2021)

III. ARGUMENT.

A. HOLDER’S MOTION IS WITHOUT MERIT.

i. There is no other action pending to test title.

Holder’s argument is predicated on Md. Real Prop. Code Ann. §14-108(a), which provides that an action to quiet title can be filed “if an action at law or proceeding in equity is not pending to enforce or test the validity of the title...” It follows, per Holder, that because he contested title in EvH One, the quiet title count in EvH Two is barred. EvH One was a simple action for damages due to Holder’s trespasses. There was no ability for EvH One to enforce or test title while it was in the District Court, as originally filed, because title cannot be adjudicated in the District Court. Md. Cts & Jud. Proc. Code Ann. §4-402(b). Plaintiff’s First Amended Complaint, including claims for Quiet Title (Count V) and Ejectment (Count VI), was filed in EvH Two on March 17,

2021. EvH One was transferred to the Circuit Court on April 12, 2021. At the time that Count V was asserted in EvH Two, there was no proceeding pending to adjudicate the status of title.

On August 20, 2021, EvH One and EvH Two were consolidated by the Court, leaving what is functionally a single case. *See* Md. Rule 2-503; Billman v. State of Md. Deposit Ins. Fund Corp., 86 Md.App. 1 (1991); Daniels v. State to Use and Benefit of Deoudes, 243 Md. 244 (1966). There is no “other” case pending to test title. There is a single, consolidated action pending before this Court and there is no basis to dismiss the quiet title portion of this consolidated action because there was, for a brief period (from April 12, 2021 to August 20, 2021) two actions¹ pending relating to the Property.

ii. Dismissal would serve no purpose.

Even if Holder was correct and the pendency of EvH One was a bar to the quiet title portion of EvH Two, dismissing Count V on that procedural ground would have no practical effect. EvH One and Two have been consolidated. The deadline for amendments is April 21, 2022. In the event of a procedural dismissal, Plaintiff would simply amend the complaint from EvH One to include the same Count V that was just dismissed, putting the parties right back in the same place they are now. The only thing that Holder’s motion can possibly accomplish is increasing the expenses incurred by Plaintiff.

B. THE COURT SHOULD ISSUE A CASE MANAGEMENT ORDER.

As is set forth more fully in Plaintiff’s Opposition to Holder’s Second Motion for Summary Judgment, Holder seems intent on prevailing through an overwhelming deluge of filings, in the apparent hopes that the parties simply wear out and give up. *See* Plaintiff’s Oppo. at p.18-20 (June 29, 2021). In that same opposition, Plaintiff suggested that the Court enter a case management

¹ Assuming, *arguendo*, that a trespass action would constitute an action to test title under Md. Real Prop. Code Ann. §14-108(a).

order restricting motions practice going forward. *Id.* The Court held the case management order issue *sub curia* and noted that it would be “determined at Scheduling Conference.” Order (July 9, 2021). There is no Scheduling Conference on the calendar.

While Holder’s current motion to dismiss is far more restrained than past pleadings, stretching over just 5 pages, focusing on relevant arguments, and without any *ad hominem* references, Holder has attached **246 pages of exhibits** to his motion. This filing, while a step in the right direction as far as the motion itself is concerned, nonetheless reinforces the need for a case management order. As such, Plaintiff renews its request for the entry of a case management order, incorporates by reference the argument contained in its prior request, and asks that the Court either issue the case management order or set a hearing and/or scheduling conference to resolve same.

IV. CONCLUSION.

For the reasons set forth above, Mr. Holder’s motion should be denied.

Respectfully submitted,

McNamee Hosea, P.A.

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Attorneys for the Plaintiff

Certificate of Service

I hereby certify that on this 7th day of September, 2021, the foregoing paper filed via MDEC
and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq.
Justin Holder
Matthew Ruble, Esq.
Robert L. Kline, III, Esq.
Talley Kovacs, Esq.

/s/ Aaron D. Neal
Aaron D. Neal, Esq.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

Benjamin Estes, *et al.*,

Plaintiffs,

v.

Justin Holder, *et al.*,

Defendants.

CASE NO.: C-21-CV-20-000430
(Consolidated with:
CASE NO: C-21-CV-21-000130)

**RESPONSE OF THE DEFENDANT, DEPARTMENT OF NATURAL
RESOURCES FOR THE STATE OF MARYLAND,
IN OPPOSITION TO DEFENDANT HOLDER’S
MOTION TO DISMISS COUNT V -- QUIET TITLE**

Defendant, Department of Natural Resources for the State of Maryland (“DNR” or “the Department”), by its attorneys Brian E. Frosh, Attorney General, and Talley H-S. Kovacs and Emily A. Vainieri, Assistant Attorneys General, hereby responds to the Motion to Dismiss Count V – Quiet Title, filed by Defendant Justin Holder on August 29, 2021.

1. This is the second Motion to Dismiss filed by Defendant Justin Holder that involves Count V – Quiet Title. This Court denied the first Motion on July 9, 2021, where Mr. Holder’s request was styled as a Motion to Dismiss or in the Alternative Motion for Partial Summary Judgment and involved Counts II, V, and VI of the Second Amended Complaint.

2. The Department’s position remains unchanged from its first response. DNR again opposes this Motion to Dismiss on procedural and substantive grounds to the

extent the Motion attempts to quiet title to the entire shared boundary between Plaintiff Estes and Defendant Holder.¹

3. The Second Amended Complaint sufficiently pleads a claim to quiet title to real property and DNR admits that it is a necessary party to the resolution of the pleading to the extent set forth in its Answer to the Second Amended Complaint. The Motion should, therefore, be denied.

4. To the extent Defendant Holder's Motion is converted into a Motion for Summary Judgment by having attached Exhibit A and Exhibits 3 through 8, DNR also opposes the Motion. The movant does not satisfy the requirements of Md. Rule 2-501(a) as no affidavit is included to set forth undisputed facts not contained in the record nor have other pleadings filed by Defendant Holder in this case satisfied the requirement that material undisputed facts be in the record. *See Vanhook v. Merchants Mut. Ins. Co.*, 22 Md.App 22 (1974) (explaining that "facts alleged in a pleading are not, by that means alone, before the court as facts for summary judgment" where they represent "mere allegations"). Consequently, the Motion should be denied.

5. Further, § 14-617(a) of the Real Property Article requires the court to hold a hearing and receive evidence prior to establishing title to property. Md. Rule § 14-617(a) ("In all cases the plaintiff shall submit evidence at a hearing before the court establishing the plaintiff's title and the court may hear or take any evidence offered

¹ If Defendant Holder's Motion implicates only the "Disputed Area" as that term is defined in Paragraph 27 of the Second Amended Complaint and which is alleged to be part of the Estes Property, DNR takes no position on the Motion.

respecting the claims of any defendant, other than claims the validity of which is admitted by the plaintiff in the complaint.”). It will be necessary for the trier of fact to determine the correct boundary intersection of the Uncle Eddies Brokedown Palace, LLC parcel and Benjamin Estes parcel, which is at a point along the State’s rail trail property conveyed by CSX Transportation, Inc. pursuant to a Quitclaim Deed dated September 6, 1991 and recorded in the Land Records of Washington County (Liber 1015, Folio 796) and as depicted on Plat No. 10955 attached to Plaintiff’s Second Amended Complaint. As discovery is ongoing, those facts are not yet on record in this case. Accordingly, the Motion should be denied.

6. Finally, DNR adopts and incorporates the arguments of Plaintiff Benjamin Estes, filed in his Response on September 7, 2021. DNR renews its request for a Case Management Order, as stated in DNR’s Line filed July 7, 2021 in support of Plaintiff Estes’ initial request.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Emily A. Vainieri

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*Counsel for the Defendant State of
Maryland, Department of Natural
Resources*

CERTIFICATE OF REDACTION

I HEREBY CERTIFY that this submission does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously.

/s/ Emily A. Vainieri
Emily A. Vainieri

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2021, a copy of the foregoing Response of the Defendant State of Maryland Department of Natural Resources in Opposition to Defendant Holder's Motion to Dismiss Count V- Quiet Title was served electronically through the MDEC system on the attorneys and/or parties entitled to receive such notice and was served via first-class mail postage prepaid on the attorneys and/or parties who are not registered with the MDEC system.

/s/ Emily A. Vainieri
Emily A. Vainieri

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, Et Al

Defendant(s)

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CASE NO.: C-21-CV-20-000430

Consolidated by August 20th, 2021 Order

CASE NO.: C-21-CV-21-000130

REPLY TO PLAINTIFF OPPOSITION TO MOTION TO DISMISS COUNT V - QUIET

TITLE

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Reply to Plaintiff Opposition to Motion to Dismiss Count V - Quiet Title; and for good and just reasons stated herein:

1. The Plaintiff would have the Court believe Plaintiff's bald assertion that Trespass is not an action to test Title, or that Plaintiff by law can amend and refile a Quiet Title with a Trespass, or Ejectment for that matter, pending. The Plaintiff is wrong. This Court made clear the 4th circuits opinion of MD Real Prop Code § 14-108(a) in Defendant Exhibit A - The Order included with his Motion to Dismiss.
2. The Plaintiff is requesting a Case Management Order as a way to escape Justice and

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delay the inevitable:

- a. Realizing the Plaintiff did not have legal title after MSJ - EJECTMENT Plaintiff amended the Complaint at paragraph 29 through 35 to add adverse possession.
 - b. The Defendant promptly fired off targeted discovery to find evidence of the facts, and Plaintiff filed a protective order which the Court Granted.
 - c. The Plaintiff has not not made a substantive challenge to the legal title, only suggesting to the Court that Courses and distances (3rd priority of calls in a deed) should be held over a call to an adjoining boundary or a monument. See Defendant Motion to Dismiss and opposition thereto incorporated herein for reference.
 - d. The Plaintiff has not identified any retained Experts by the deadline in the scheduling order, Title or Surveyor.
 - e. The Plaintiff non-retained expert surveyor made substantial change to his testimony by errata stating *inter alia* "I was not provided any title work by anyone prior to completing this project".
 - f. The Plaintiff non-retained expert surveyor has now made Motion of Protective Order when a deposition was requested by this Defendant specifically requesting how the Surveyor formed his opinion without title work.
 - g. The Plaintiff is currently relying on the Survey done with no title work and bald allegations of adverse possession to hang on in a sinking case.
3. The Plaintiff asserts the Motion included 246 pages of exhibits. Those Exhibits were the recorded title back to March 15th, 1792, which the Plaintiff can not and will not dispute.
 4. The Plaintiff has refused to join the necessary parties, and is not interested in following the law as required. The Quiet title must be dismissed for non-joiner.

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5. The Plaintiff does not hold legal title to the property in dispute, and by his own admission is not in possession due to Defendant repeated Trespass. Equity will entertain jurisdiction when a party is in possession and the Plaintiff is not.
6. The Plaintiff has adequate remedy in law by claim to right in ejectment; if he has the facts to prove it. Discovery is difficult with a protective order in place.¹

Wherefore the Defendant request the Court dismiss Count V as illegal, without jurisdiction and fails to join the property parties. That furthermore the Court deny Plaintiff request for a [protective] case management order and allow justice to proceed. Either Plaintiff has a case or he doesn't, if not now when!

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2021, a copy of the foregoing Reply to Plaintiff Opposition to Motion to Dismiss Count V - Quiet Title was served via the MDEC system to :

Talley Kovacs, Esq.
Aaron Neal, Esq.,
Matthew Ruble, Esq.,
Robert Kline, Esq.,
Justin Holder, Pro Se



Justin K. Holder, Pro Se

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¹ The Defendant served very targeted to adverse possession discovery in case c-21-cv-21-000130 and the case was consolidated the date the discovery was due, further frustrating Defendant.

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES

Plaintiff

v.

JUSTIN HOLDER, Et Al

Defendant(s)

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CASE NO.: C-21-CV-20-000430

Consolidated by August 20th, 2021 Order

CASE NO.: C-21-CV-21-000130

REPLY TO DNR OPPOSITION TO MOTION TO DISMISS COUNT V - QUIET TITLE

COMES NOW Defendant, Justin Holder, in Proper Person, and files this Reply to DNR Opposition to Motion to Dismiss Count V - Quiet Title; and for good and just reasons stated herein:

THE UNOPPOSED MOTION

The DNR incorporates the Plaintiff Opposition at #6. The Plaintiff or the DNR both neglect to make a substantive argument that Trespassing is **NOT** an action at law to test the validity of title. There has been no Germane and genuine dispute of fact. Quiet Title by operation of Law can **NOT** be sustained. The 4th Circuit explicitly decided in *Young v Holder* c-21-cv-20-000371 a Quiet Title can not be sustained when another matter to test title was

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pending, see Exhibit A - The Order. DNR and the Plaintiff fail to make any coherent argument to the contrary. The DNR making a non sensical bald Assertion the Defendant's Motion is somehow defective. Realizing defeat both the Plaintiff and DNR beg the Court for mercy with a case management order to distract from their meritless oppositions. Neither party was able to attack the strict legal standard of the Motion and therefore Count V - Quiet Title should be dismissed.

DNR BALD ASSERTIONS

The DNR has Opposed the Motion with the Bald Assertion that the Defendant just made "mere allegations." The Defendant will assure the Honorable Court this is not accurate.¹ The DNR is correct and the Defendant was well aware an MTD under rule 2-322(c) for failure to state a claim which relief can be sought is converted to MSJ under 2-501(a); when affidavit is attached. The Defendant's Motion is jurisdictional more than failing to state a claim, however just to be safe this Defendant took every precaution and added the affidavit.

The Defendant provided affidavit because the assertion made by the Plaintiff at in the 2nd amended complaint is unsubstantiated. The Recorded title and legal title is in the title chain of Defendant "Uncle Eddies". The affidavit was included to show there is no genuine dispute of recorded title, and was not opposed by either Plaintiff or DNR. The DNR, just like Plaintiff, fails to comply with 2-501(b) "asserting the existence of a material fact" that is "supported by an affidavit or other written statement under oath.", required in an Opposition, clearly not meeting the same standard in which they demand the Court hold

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¹ See Defendant Amended Answer and Exhibit C - Affidavit Record Title which contain well substantiated facts under oath with citation to deposition transcript, public records, emails or land records.

the Defendant. Defendant Motion was to dismiss the Quiet Title as a matter of law², for lack of jurisdiction, and failure to join. Rule 2-322 does not appear to convert these claims to an MSJ, if the Court determines it does the Defendant has attached an Affidavit as required.

The DNR is incorrect the Defendant's Pleadings and Affidavit contain "mere allegations". The Defendant's Amended Answer contain precise facts directed toward the the Defendant's Claim of Fee Simple ownership of the "Abandoned Railroad". The DNR "merely alleges" to have a fee simple interest in the vicinity³ of the disputed property. The Defendant's Affidavit provides an exhibit from the land records and the sworn testimony of (DNR relied on) Expert Surveyor Frederic Frederick; to support each of the numbered facts. This Defendant does not make bald assertions and allegations, this Defendant deals in the cold hard facts. The DNR or Plaintiff has yet to reply to the Defendant Amended Answer with a denial of the facts contained within.⁴

What the Plaintiff and DNR fail to comprehend is Quiet Title requires jurisdiction in equity, which the Plaintiff and DNR do not have. Equity entertains jurisdiction when a party is in possession, or a party lacks adequate remedy at law. The Plaintiff or the DNR are NOT in possession of the property; therefore they both lack jurisdiction in equity and have remedy at law in Ejectment. The Quiet Title must be dismissed for lack of jurisdiction, the Court simply does not have the Authority in equity to take judicial action under Quiet Title.

The Defendant does not see that as failure to state a claim, it is jurisdictional more so. RP 14-108(a) "The Law" is as the 4th Circuit decided the law in Exhibit A - The Order. A Quiet Tile can not be filed or sustained when there is a matter to test the validity of title pending.

³ DNR Answer to Plaintiff Interrogatory number 9. DNR was asked what interest they had in the property and replied they had a fee simple interest.....in the vicinity.

⁴ Citing the case DNR cited in their Opposition "Stipulation or concession. Facts conceded or stipulated to be true facts are likewise properly before the court." *Vanhook v. Merchants Mut. Ins. Co.*, 321 A. 2d 540 - Md: Court of Special Appeals 1974. As the Opposition did not provide any sworn testimony to dispute the facts in Defendant Affidavit, and the Plaintiff and DNR do not deny the Amended Pleading, the facts are conceded. The DNR has not answered the Pleading with a reply to an answer as mentioned in rule 1-202(u)

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THE [PROTECTIVE] CASE MANAGEMENT ORDER

The Plaintiff and DNR request a case management order yet can barely muster a substantive argument to the Defendants straightforward Motion. The Defendant would kindly remind the Court that his hands have been tied behind his back already in discovery. The Expert Surveyor, for Plaintiff and DNR, has a protective order in place. The Plaintiff has a protective order in place. The Defendants hands are tied, see Protective Orders and Opposition thereto for Exhibits and facts in the record, incorporated herein by reference.

Frederic Frederick Protective Order:

1. Mr. Frederick admittedly performed the title opinion and survey with “no title work”.
2. Mr. Nagel provided in *Duces Tecum* title work back to March 15th, 1792.
3. Mr. Frederic in deposition admittedly could not locate the originally Stone Monuments.
4. Mr. Nagel provided the location for the original Stone Monuments in the survey certificated annexed to the Land Records describing Defendants Property.
5. Mr. Frederick insisted in deposition that Courses and Distances should prevail over a call to a monument or adjoining boundary.
6. The Court of Appeals instructs this Defendant that the Monument is the priority call over course and distances and a call to an adjoining boundary trumps both.⁵
7. Mr. Frederic refused to answer the question at the end of April 27th, 2021 deposition asking if he was negligent in not drawing a “deed overlap” of the area disputed by Plaintiff and Defendant “Uncle Eddie” and DNR.
8. Mr. Frederick made substantive changes in his testimony by errata, including he was provided no title work.
9. The Court granted a protective order and this Defendant is left without opportunity to discover material evidence related to the Survey Plaintiff and DNR rely on..

⁵ See Section in Motion to Dismiss dedicated to priority of calls with precedence and citations, incorporated herein for reference.

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Plaintiff Protective Order:

1. Defendant files an MSJ-Ejectment challenging Plaintiff to prove the goodness of his title, incorporated herein by reference.
2. The Plaintiff fails to prove his title, instead filing a sham affidavit that he and his predecessors adversely possessed the land. See Motion to Strike Sham Affidavit incorporated herein by reference.
3. The Plaintiff Amends his pleadings to add adverse possession at paragraph 29 to 35. See second amended complaint comparison copy.
4. The Defendant fires off targeted discovery towards Adverse possession.
5. The Plaintiff promptly files a Protective Order; the Court Grants Protective Order and a Motion to Compel discovery from Defendant⁶.
6. The Defendant is left without a discovery tool for material evidence of adverse possession.

In case c-21-cv-21-000130 the Defendant agains serves the Plaintiff with discovery targeted towards adverse possession. The Defendant sets Mr. Frederick for deposition. On the day the discovery is due, and 1 week before Mr. Fredericks deposition, the cases are consolidated. Again the Defendant is left with no tools to discovery the admissible evidence material to the instant case.

Now the Plaintiff and DNR are begging the Court for a case management order. The only purpose a case management order will serve is to delay justice. Either the Surveyor did or did not draw an accurate opinion of title. Either the Plaintiff did or did not adversely

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⁶ The Plaintiff at the time had 3 trespassing charges against the Defendant pending. The charges were dropped by the States Attorney in July. The Defendant still promptly provided all the discovery materials immediately upon Court Order.

possess the ground. The Defendants hands are tied behind his back at a critical time. The Defendant must discover how the survey was done with no title work and the facts Plaintiff will rely on at trial for adverse possession. The Defendant is unfairly prejudiced without discovery in hiring expert witnesses by the deadlines set in scheduling order. This is the Defendants first land dispute case in the Circuit Court. The Defendant will not make any assumptions and will maintain faith in the Court. This Defendant would just say it is frustrating to know you are right, have all the proof and not be able to frame it for the Court to understand. The Defendant respectfully request the Court would allow the Defendant to continue to litigate his case and make well structured arguments in good faith. The Plaintiff and DNR may be requesting a case management order, but neither has ever said the arguments lack merit, are in bad faith or do not have substantial justification.

CONCLUSION

Whereas dismissal of Count V - Quiet Title may feel awkward to the Court, it is the law as determined by this very Court in Exhibit A - The Order. Granting a Motion to Dismiss written by a pro se Defendant opposed by very respected Attorneys is a strange feeling, but again the law is clear. It would be unjust to deny this Defendant the opportunity to maintain a *Quia Timet* action citing RP 14-108 in Exhibit 3 - The Order; and then allow a Plaintiff and State to maintain a Quiet Title with a Trespass action to try title pending. What is good for the goose has to be good for the gander or justice will never prevail.

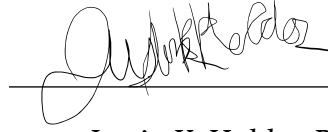
Wherefore the Defendant request the Court dismiss Count V as a matter of law, lacks jurisdiction and fails to join the property parties. That furthermore the Court deny Plaintiff request for a [protective] case management order and allow justice to proceed. Either Plaintiff has a case or he doesn't, if not now when!

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2021, a copy of the foregoing Reply to DNR Opposition to Motion to Dismiss Count V - Quiet Title was served via the MDEC system to :

Talley Kovacs, Esq.
Aaron Neal, Esq.,
Matthew Ruble, Esq.,
Robert Kline, Esq.,
Justin Holder, Pro Se



Justin K. Holder, Pro Se

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